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No. 94-

Supreme Court, U.S.
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IN THE

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OCTOBER TERM, 1994

ASTON A. BEADLE,

Petitioner,

v.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A/ HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, AND WALTER C. HEINRICH, AS SHERIFF OF HILLSBOROUGH COUNTY, FLORIDA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Section 701(j) of Title VII of the Civil Rights Act of 1964 requires an employer to make reasonable accommodations, short of undue hardship, for the religious practices of its employees. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977). The questions presented are:

I. Where no collective bargaining imposed seniority system exists, whether an employer must do more than uniformly apply neutral work rules when such application places an uneven burden on Sabbath-keeping employees requiring them to choose between their religion and their job.

II. If an employer altered its neutral scheduling system to accommodate an employee's secular needs, such as schooling, may it withhold this method of accommodating an employee's religious needs?

PARTIES TO THE PROCEEDINGS

Petitioner: Aston A. Beadle

Respondents: Hillsborough County Sheriff's Office, a/k/a Hillsborough County Sheriff's Department, Walter C. Heinrich, as Sheriff of Hillsborough County, Florida

Walter C. Heinrich, the employer, as Sheriff of Hillsborough County, Florida, is an elected constitutional officer of the State of Florida and has control and supervision of the Hillsborough County Sheriff's Office and its employees. He therefore has no parent companies or subsidiaries. Petitioner makes this declaration pursuant to Supreme Court Rule 29.

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October Term, 1994

ASTON A. BEADLE,

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HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, and WALTER C. HEINRICH, as Sheriff of Hillsborough County, Florida,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

Aston A. Beadle petitions for a writ of certiorari to review the judgment of the Court of Appeals for the Eleventh Circuit. The opinion and judgment of the court of appeals was entered on August 23, 1994. A Petition for Rehearing and Suggestions for Rehearing En Banc was denied on November 3, 1994. On January 26, 1995, Justice Kennedy entered an

order extending the time for filing a petition for writ of certiorari until March 31, 1995.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 29 F.3d 589 (11th Cir. 1994), and is reprinted in the App. at 1a-10a, *infra*.

The memorandum opinion of the United States District Court for the Middle District of Florida, Tampa Division, which was entered on October 1, 1994, is unreported and is reprinted in the App. at 19a-25a, *infra*.

JURISDICTION

Invoking federal jurisdiction under Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, 42 U.S.C. § 2000e *et seq.*, and under 28 U.S.C. § 1331 (general federal question jurisdiction), the petitioner brought this suit in the United States District Court for the Middle District of Florida, Tampa Division. On October 4, 1993, the district court entered judgment on the merits in favor of the defendants. *See* App. at 26a, *infra*.

In response to petitioner's appeal, the Eleventh Circuit on August 23, 1994, entered a judgment and order affirming the district court's judgment. *See* App. at 1a-10a, *infra*. Thereafter a timely petition for rehearing and suggestions for rehearing en banc was filed with the court of appeals. The court of appeals on November 3, 1994, entered an order denying the petition for rehearing and suggestions for rehearing en banc. *See* App. at 11a-12a, *infra*. An application for extension of time within which to file a petition for a writ

of certiorari was presented to Justice Kennedy and on January 26, 1995, an order was entered extending the time for filing such a petition until March 31, 1995. *See* App. at 29a, *infra*.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e(j) provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e-2(a) provides:

> It shall be an unlawful employment practice for an employer -
>
> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely

> affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e-2(h) provides in pertinent part:

> Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, . . . provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin,. . .

STATEMENT OF THE CASE

A. Relevant Facts

Aston A. Beadle is a practicing member of the Seventh-day Adventist Church. A fundamental tenet of that faith is the prohibition against secular labor on its Sabbath from sundown Friday to sundown Saturday.

Beadle applied for a position in the detention department of the Hillsborough County Sheriff's Office in January of 1986. Upon learning he would be assigned to work during his Sabbath, Beadle informed the Department's commander of his need to be off work on his Sabbath. The Sheriff's Department was not covered by a collective bargaining agreement.

Beadle's scheduled days off were switched from Tuesday and Wednesday to Friday and Saturday pending an internal legal opinion on the Department's religious accommodation

duty. In April of 1986 the Sheriff's legal advisor, relying on this Court's decision in *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977), concluded the Department was not required by Title VII to accommodate Beadle by granting him permanent days off. Beadle was advised that since Department policy permitted shift trading, he was free to arrange for shift swaps with other employees (PX 12). Like other employees, he could also request use of vacation and compensation time (Fitch Dep. 77:18-78:6).

Job swaps, however, proved unworkable because many of the employees were working overtime and on special shifts (R6-62:6-16). Every time Beadle was scheduled to work on his Sabbath, he submitted a comp time leave request (R5-136:22-24). Eventually the Department denied all Beadle's leave requests despite the fact when Beadle was absent there were as many officers working as when he was on duty (R7-19:24-22:6; R7-53:19-55:5).

Finding job swaps and the use of comp time an unworkable accommodation, Beadle on May 12 requested a transfer to a bailiff position which would allow him to be off during his Sabbaths (PX 16). Beadle's supervisors, Lieutenant Deaton and Captain Davenport, recommended the assignment transfer (Davenport Dep. at 21:9-23:19). But Davenport's superior, Major Cook, informed Beadle he could not be transferred until he completed his year's probation (R5-73:17-74:25). However, it is uncontradicted that the Sheriff could have transferred Beadle to a bailiff's position. He had the authority to do so and had at times even hired bailiffs off the street (Heinrich Dep. at 16:19-18:3; R7-33:13-34:8; R7-58:3-59:13; Beadle 2/13/92 Dep. at 78:13; 81:10-84:7; 152:1-153:7).

Experiencing increasing scheduling difficulties, Beadle on August 7, 1986, applied for a recreation detail which also did

not require Sabbath work (PX 23; R5-82:16-84:9). Although it would not have caused any safety problem or other hazard to transfer Beadle prior to the completion of his probation, the Department refused to consider such a transfer (Cook Dep. at 57:20-58:22). Rather, the Department continued to insist Beadle had been accommodated for Title VII purposes through the neutral rotating shifts and job swaps.

Beadle was a conscientious employee, according to Lieutenant Deaton. He came to work on time and worked overtime when requested (Deaton Dep. at 69:18-71:12). Deaton advised Beadle it would actually be to the Department's advantage if he would work Sundays instead of Saturdays because Sundays were their busiest days. Beadle agreed to do so, but no action was taken (R5-72:20-73:6). Beadle informed the Sheriff he would work *any* day other than his Sabbath (Cook Dep. at 38:4-39:1).

On September 13 Lieutenant Deaton agreed to give Beadle Fridays and Saturdays off until otherwise instructed by his superiors. Shortly thereafter Deaton was overruled by Captain Davenport and so advised Beadle (R5-210:12-212:7; R6-125:14-21; Beadle 6/23/92 Dep. at 22:2-23:24; 38:8-39:22; 53:9-55:23) . Colonel Parrish admitted at the trial it was understandable Beadle would be confused about how he was to be accommodated during that time in his employment (R7-37:5-14; 37:21-39:21).

The Sheriff did accommodate employees attending school by scheduling them to work an undesirable shift, thus removing them from the rotating shift arrangement. However, the Sheriff refused to assign Beadle to such an undesirable shift, thus taking him off rotation, because "that would have been contrary to what guidance [there was] from legal." (R5-120:7-8; R7-49:16-52:16; Fitch Dep. at 25:1-29:24; 69:20-70:13).

Although no deputy ever complained about Beadle being accommodated and there was no evidence of coworker discontent (Parrish Dep. at 152:20-154:25), Colonel Parrish testified "to make an exception for him would open the door to exceptions for other people of any religion." (Parrish Dep. at 127:9-128:1) Captain Davenport echoed this position and instructed Lieutenant Deaton not to schedule Beadle off on Friday nights because it would set a bad precedent (R6-175:6-13; Davenport Dep. at 63:12-23). Despite Colonel Parrish's fears, no other deputy requested a religious accommodation (R7-47:23-49:15).

On November 10 Lieutenant Deaton transferred Beadle from squad 4 to squad 5 so Beadle could be off work during his Sabbath long enough to complete his probation, thus eliminating a departmental policy impediment to Beadle's transfer.[1] Because less officers were assigned to squad 5 than squad 4, the transfer did not result in bumping an officer and advantaged the Department by equalizing the two squads while at the same time accommodating Beadle's religious needs -- at no cost to the Department and without any suggestion of reverse discrimination (R7-39:22-43:8; R5-96:17-99:23; 193:3-194:3; Beadle 6/23/92 Dep. at 15-67:20).

Three days later, however, Beadle was told he would be fired unless willing to work on his Sabbath. Beadle refused and was terminated (R5-96:1-16; 99:25-100:4; 212:14-23).

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[1]In addition to a permanent accommodation by transfer to a bailiff's position, there were other positions in the Department that would not require Beadle to work on his Sabbath. They included the recreation detail; a medical unit position (Cook Dep. at 31:14-33:8; R6-86:25-87:25); and the "state desk" position preparing paperwork about inmates being transferred to state prison (Parrish Dep. at 85:10-86:9).

B. The EEOC Determination

On July 29, 1988, the Equal Employment Opportunity Commission issued its Determination (App. at 27a-28a) concluding that the Sheriff's Department

> failed to facilitate or foster an atmosphere in which voluntary substitutes could be made during Charging Party's observance of his sabbath. In addition, there were no efforts made to reassign the Charging Party to available duties which did not require him to work on his sabbath, even though the Charging Party had nearly completed his probationary period.

(*Id.* at 28a).

C. The Trial Court's Decision

The trial court found that Beadle had established a prima facie case under Title VII's religious accommodation requirements (App. at 20a). The court also found the "neutral rotating shift system [used by the Sheriff's Department] constituted a reasonable accommodation to Beadle within the meaning of Title VII." (App. at 22a-23a). According to the court,

> the Sheriff made reasonable accommodations within the neutral rotating shift system by affording Beadle the opportunity to use vacation, sick day and compensation time to the extent that his shift conflicted with his faith's Sabbath and to swap days with fellow officers. Further, to require the Sheriff to assign Beadle to a permanent shift which would exclude work on Saturdays would be to confer upon him a benefit exclusive of the benefits conferred

> upon his fellow jail deputies, which Title VII does not require, according to *Trans World Airlines, Inc. v. Hardison*.

(App. at 23a).

Relying on *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986), the court rejected Beadle's claim that the Sheriff could have reasonably accommodated him by transferring him to a bailiff position. *Ansonia* held "where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship." *Id.* at 68. (App. at 24a).

The trial court concluded "the bailiff position was unavailable to Beadle due to his failure to complete the one-year probationary period." (App. at 24a). Also, the court found that the recreational detail squad also required completion of the probationary period and was not a permanent position. (App. at 24a).

D. The Court of Appeals Decision

The court of appeals rejected Beadle's claim "that the Department's neutral rotating shift system and its authorization of shift swaps within the system were insufficient to meet the requirements of Title VII." (App. at 6a-7a). To determine whether the Department could have accommodated Beadle's beliefs without undue hardship, the court of appeals relying on *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 80-81 (1977), stated: "The Supreme Court, however, found that the seniority provisions contained in the collective bargaining agreement between TWA and the union provided such

accommodation." (App. at 7a). While acknowledging *Hardison* was concerned specifically with a bona fide seniority system, the court nevertheless concluded *Hardison* was not limited to bona fide seniority systems but rather was intended to apply more broadly to "the neutrality of the system utilized." (App. at 8a). Thus, the neutral rotating shift system and the Department's authorization of shift swaps were deemed by the court to satisfy Title VII's requirement (*id.*).

The court further held the Department's "authorizations of voluntary swaps . . . within neutral rotating shift systems constitute reasonable accommodations under Title VII." (App. at 8a-9a). Since it had found "that the Department reasonably accommodated Beadle's religious practices for purposes of Title VII," the court concluded it was not required under *Ansonia* to further consider whether any or all of the suggested accommodations, (transfers to bailiff or recreational detail positions) "would also qualify as 'reasonable' under the statute, or whether they would likely result in 'undue hardship' to the employer." (*Id.* at 9a).

REASONS FOR GRANTING THE WRIT

I. THE COURT OF APPEALS' ERRONEOUS HOLDING THAT AN EMPLOYER SATISFIES ITS DUTY OF ACCOMMODATION BY SIMPLY ADHERING TO NEUTRAL WORK RULES RESULTS IN A CONFLICT AMONG THE CIRCUITS.

The decision below is in direct conflict with holdings of at least two other circuits: *Smith v. Pyro Mining Co.*, 827 F.2d

1081 (6th Cir. 1987), *cert. denied*, 485 U.S. 989 (1988)[2] (when an employee had a religious objection to trading shifts, permitting a religious observer to trade days off with other employees did not provide a reasonable accommodation); and *EEOC v. Ithaca Industries, Inc.*, 849 F.2d 116 (4th Cir. 1988), *cert. denied*, 488 U.S. 924 (1988) (although the employer demonstrated an effort to accommodate all employees assigned to work on Sunday, the court held this was not a reasonable accommodation because the accommodation was not aimed specifically at addressing the religious needs of the plaintiff). The *Smith* and *Ithaca* courts, unlike the Eleventh Circuit, refused to permit employers to satisfy their accommodation duty by merely adhering to neutral work rules.[3]

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[2]In *Smith* the employer implemented a neutral scheduling system that required each employee to work twenty-six Sundays per year. Prior to implementing this system, the employer announced that employees who objected to working Sundays could avoid the shift by arranging swaps with other employees. Because of Smith's religious beliefs, however, he refused to either work on Sunday or solicit a replacement and was consequently fired. *Smith*, 827 F.2d 1083-84. Thus, instead of permitting the employee to satisfy his accommodation duty by adhering to a neutral work place rule, the Sixth Circuit, unlike the Eleventh Circuit, required the employer to take affirmative action not resulting in undue hardship.

[3]In *Kendall v. United Airlines*, 494 F. Supp. 1380 (N.D. Ill. 1980), the court rejected the idea that neutral work rules contained in a collective bargaining agreement constitute an accommodation. The district court held that Title VII could not require the employer to revamp its schedule extensively by using means beyond those contained in the bargaining

Through this case the Eleventh Circuit has announced the renascence of the controversial holding in *Dewey v. Reynolds Metals, Co.*, 429 F.2d 324 (6th Cir. 1970), *aff'd by an equally divided court*, 402 U.S. 689 (1971). *Dewey* held that an employer was not required to provide a religious accommodation under Title VII where a non-discriminatory collective bargaining agreement existed and was executed in a "fair and equitable" manner. *Id.* at 329. In essence, *Dewey* found the existence of neutral work rules shielded the employer from making further accommodation for its employees' religious needs.

The following year, primarily in response to *Dewey*, section 701(j) was added to Title VII. Through this amendment Congress required employers to "make reasonable accommodation for employees whose 'religion' may include . . . beliefs such as Sabbath observance, which differ from the employer's . . . requirements regarding . . . schedules. . . . Failure to make such accommodation would be unlawful [absent] undue hardship." Section-by-Section Analysis of H.R. 1746, quoted in 118 Cong. Rec. 7167.

A. A Neutral Rotating Shift Is Not A Reasonable Accommodation.

Echoing the trial court's conclusion, the Eleventh Circuit held the Department's neutral rotating shift system afforded a reasonable accommodation to an employee whose religious beliefs precluded him from working from sundown Friday to sundown Saturday. The court observed "[t]he Supreme Court . . . [in *Hardison*] found that the seniority provisions

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agreement. However, it found Title VII required the employer to accommodate by other means, such a leave of absence.

contained in the collective bargaining agreement between TWA and the union *provided* such an accommodation." (App. at 7a) (emphasis supplied). The appellate court then suggested this finding was not restricted to seniority provisions but rather applied more broadly to all neutral systems employed by an employer for allocating weekend work (App. at 8a).

Hardison, however, did not hold that seniority provisions provide a *per se* accommodation. Such a decision would have affirmed *Dewey* and rejected section 701(j). *Dewey* found that the non-discriminatory internal policies of employers are immune from regulation. *Hardison* actually found the seniority "system itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees." 432 U.S. at 78.

Hardison and *Dewey* were both concerned with the fair and nondiscriminatory implementation of a collective bargaining agreement and whether there was an intent to discriminate through one of its provisions. The *Hardison* Court did not, however, affirm *Dewey*. Unlike *Dewey*, *Hardison* concluded that the mere fact the contract met these non-discrimination requirements did not eliminate the duty of an employer to accommodate.

Before looking at seniority provisions, the *Hardison* Court first established that TWA had "tak[en] appropriate action to accommodate as required by Title VII." *Id.* at 77 (quoting from the district court in *Hardison*). The Court in *Hardison* accepted the district court's finding that "TWA had done all that it could do to accommodate Hardison's religious beliefs without either incurring substantial costs or violating the

seniority rights of other employees." *Id.* at 83 n.14.[4]

Both the trial court and court of appeals erred in finding the Sheriff met his Title VII religious accommodation obligation by maintaining a neutral rotating shift. Citing *Hardison*, the trial court stated "[t]he neutral rotating shift system has been found by the Courts to be an accepted form of accommodation under Title VII." (App. at 22a-23a). This illogical conclusion that a rotating shift -- which was the actual cause of Beadle's scheduling problems -- constituted a reasonable accommodation was based on a misreading of *Hardison*, 432 U.S. at 81-84. According to the lower court, *Hardison* holds "'[a]bsent a discriminatory purpose,' the operation of a neutral *scheduling* system . . . designed to meet the needs of all employees, 'cannot be an unlawful employment practice even if the system has some discriminatory consequences,'" quoting *Hardison*, 432 U.S. at 82 (emphasis added). (App. at 21a). But the language the judge paraphrased did not relate to neutral "scheduling," rather to neutral "seniority systems."

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[4]Other circuits have refused to embrace the Eleventh Circuit's recasting of *Hardison*. For example, in *Ward v. Allegheny Ludlum Steel Corp.*, 560 F.2d 579 (3d Cir. 1977), the court wrote extensively about the many actions taken by TWA to attempt an accommodation. *McDaniel v. Essex International*, 696 F.2d 34, 37 (6th Cir. 1982), recognized that *Hardison* "established that the employer could not accommodate the employee without violating seniority provisions . . . [and] in order to cover . . . [Saturday shifts] would have had to pay overtime or hire an extra employee." *McDaniel* observed that, unlike *Hardison*, there was no "issue of seniority, which has a special status under Title VII because of the exception contained in § 701(h), 42 U.S.C. 2000e-2(h)." *Id.*

The principal issue before this Court in *Hardison* was the correctness of the "the fundamental proposition that Title VII does not require an employer and a union who have agreed on a seniority system to deprive senior employees of their seniority rights in order to accommodate a junior employee's religious practices." *Id.* at 83 n.14.[5] This Court observed if TWA had circumvented the seniority provision by relieving Hardison of Saturday work and ordering a senior employee to replace him, it would have denied the latter his contractual shift preferences. As the Court noted, seniority systems are afforded special treatment under section 703(h) (42 U.S.C. § 2000e-2(h)), *id.* at 81, concluding the "'purpose of § 703(h) was to make clear that the routine application of a bona fide seniority system would not be unlawful under Title VII.'" *Id.* at 82, quoting *International Bhd. of Teamsters v. United States*, 431 U.S. 324, 352 (1977).

Thus this Court directed its attention toward the tension between a seniority system incorporated within a collective bargaining agreement and the statutory duty of accommodation imposed by Title VII. Because seniority is inextricably intertwined with collective bargaining, which goes to "the core of our national labor policy," *Hardison*, 432 U.S. at 79, it is not to be subordinated to other policies such as Title VII "[w]ithout a clear and express indication from Congress." *Id.*

Both lower court opinions attempted to extend the protection afforded to bona fide seniority systems to all neutral work rules, such as a rotational scheduling system. However, the statute provides no equivalent protection for other neutral

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[5]*Hardison* specifically held that a collective bargaining agreement's seniority provision *may not be circumvented* in order to permit employees to be accommodated for their religious needs. 432 U.S. at 79.

work rules. *McDaniel v. Essex International*, 696 F.2d 34, 37 & 38 (6th Cir. 1982), in fact, rejected such a concept, recognizing the *Hardison* Court's deference to collective bargaining agreements was limited to seniority rights.[6]

In fact, section 701(j) of Title VII was "enacted with the stated purpose to protect Sabbath observers whose employers fail to adjust work schedules to fit their needs." *EEOC v. Ithaca Industries, Inc.*, 849 F.2d 116, 118 (4th Cir. 1988) (en banc). "The primary effect of . . . [section 701(j)] is to restrain employers from enforcing uniform work requirements that, although neutral in appearance, discriminate in effect against employees holding certain religious convictions." *EEOC v. E.I. DuPont DeNemoure & Co.*, 623 F. Supp. 15, 16 (E.D. N.C. 1985).

B. Permitting Shift Swaps Is Not A *Per Se* Accommodation.

In addition to finding a neutral rotating shift to be a

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[6]For instance, union security provisions are not shielded from unintentional discrimination although embedded in a collective bargaining agreement. *See Cooper v. General Dynamics*, 533 F.2d 163 (5th Cir. 1976), *cert. denied sub nom International Ass'n of Machinists and Aerospace Workers v. Hopkins*, 433 U.S. 908 (1977); *Burns v. Southern Pac. Transp. Co.*, 589 F.2d 403 (9th Cir. 1978); *Tooley v. Martin-Marietta Corp.*, 648 F.2d 1239 (9th Cir.), *cert. denied*, 454 U.S. 1098 (1981); *Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d 397 (9th Cir. 1978), *cert. denied*, 454 U.S. 1145 (1982); *McDaniel v. Essex International*, 696 F.2d 34 (6th Cir. 1982); *Nottelson v. A.O. Smith Corp.*, 643 F.2d 445 (7th Cir. 1981), *cert. denied*, 454 U.S. 1046 (1981).

reasonable accommodation, the court of appeals concluded that mere "authorization of voluntary swaps instituted by employers within neutral rotating shifts systems constitute reasonable accommodations under Title VII." (App. at 8a-9a). The Sheriff's legal counsel issued a memorandum, relied upon by management, concluding the Department had no duty to accommodate Beadle but then stated:

> Other cases [in addition to *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63 (1977)] under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows this shift trading practice, I see no problem with requiring the employee to work Saturdays and having him work out the details of his shift trades with other employees.

(PX 12).

Both courts below decided that *permitting* an employee to swap shifts, pursuant to a neutral work policy, constituted a reasonable accommodation. Both held because a reasonable accommodation had been provided, the inquiry was at an end (App. at 9a).

By following defective legal advice, the Department failed to make a sufficient accommodation under *any* reasonable concept of accommodation. The Eleventh Circuit then held that an employer may escape its responsibility while making no accommodation. This is accomplished by shifting the accommodation burden imposed by § 701(j) on employers to the religious observer and its other employees. Congress never contemplated compliance by such inaction.

Although the Department had a policy allowing all employees, including Beadle, to trade shifts, uncontradicted testimony confirms other deputies were unwilling to swap shifts with Beadle. According to the command officer of the Morgan Street Jail where Beadle worked, Beadle "had used up deputies that did accommodate him at first." (R6-75:6-76; 2; 76:12-21; 77:1-8; Cook Dep. at 37:5-38:10). The officer acknowledged it was difficult for Beadle to find deputies to trade with him because many of the employees were working overtime and on special shifts (R6-62:6-16).[7]

In some circumstances, permitting voluntary swaps may provide an effective means of accommodation. But once the Sheriff became aware that job swaps were no longer a feasible means of accommodation, neither *Ansonia* nor section 701(j) excused the Sheriff from further accommodation efforts.

What makes this case especially disturbing is Beadle's lower-level supervisors had determined neutral rotating shifts, job swaps, and compensatory time would not eliminate Beadle's problem. Yet they responded with other successful, no-cost accommodations until countermanded by upper management (R 5-210:12-212:7; R 6-125:14-21; R 7-37:5-39:21; Beadle 6/23/92 Dep. at 22:2-23:24; 38:8-34:22; 53:9-35:23). In fact, when Beadle was fired, his immediate supervisor was accommodating him without complaint by, or displacement of, coworkers (R 7-39:22-43:8; DX 1).

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[7]Lieutenant Deaton testified Beadle was unable to find anyone to swap with him, and the Department no longer allowed compensatory time to be used (R6-172:21-173:14). Beadle's squad sergeant also testified deputies were unwilling to exchange their days off with Beadle (Deitch Dep. at 40:13-41:16).

The Sixth Circuit recognized in *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1087-88 (6th cir. 1987), Congress repudiated *Dewey* when enacting the provisions of section 701(j). In *Smith* the company argued "that its consent to shift swapping, supplemented by its 'Open Door Policy,' was sufficient to satisfy its duty to reasonably accommodate Smith's religious beliefs." *Id.* at 1086. The district court, however, held that Pyro had to make an affirmative effort to reasonably accommodate Smith by arranging a swap for him." *Id.*

The court of appeals in *Smith* recognized that the issue raised there was very close to that raised in *Dewey*. *Id.* at 1087. The question before the court was "whether an employer reasonably accommodates an employee by allowing the employee to arrange a shift trade himself when the employee considers it a sin to arrange such a swap." *Id.* at 1088. The court concluded that in such circumstances the company had not met its Title VII obligation and must further attempt accommodating Smith unless such attempts would pose an undue hardship. *Id.* Thus, *Smith* rejected both the concept that neutral work rules themselves constituted a reasonable accommodation and also inferentially concluded that if an "accommodation" in the form of an allowance for shift swapping did not resolve the scheduling conflict, the employer had the affirmative duty to try alternative means of accommodation.

C. A Reasonable Accommodation Must Necessarily Eliminate The Conflict.

The Eleventh Circuit has misread *Ansonia*. It fails to distinguish between actual accommodation through the elimination of the conflict which *Ansonia* involved and a system of self-accommodation under a job swap arrangement which fails to solve the problem. In *Ansonia* the conflict

between religious needs and employment demands was reconciled. *Ansonia* considered whether Title VII entitled an employee to his preferred accommodation; it in no way established that a self-accommodation system constituted a per se satisfaction of the employer's obligation under section 701(j) of Title VII. The Ninth Circuit in *American Postal Union, San Francisco Local v. Postmaster General*, 781 F.2d 772, 775-76 (9th Cir. 1986), likewise affirmed the obligation of an employer to take an active accommodation role.[8]

The Eleventh Circuit's decision permits an employer: to do nothing; to make no adjustment; to take no action to accommodate an employee's religious beliefs, regardless of whether such action would cause the employer undue hardship. The employer need only have a neutral system in place, such as a neutral rotating shift, and a permissive attitude toward voluntary job swaps. This is not sufficient accommodation under section 701(j), especially when coworkers are unwilling or unable to voluntarily swap shifts with the religious observer. This Court in *Ansonia* never adopted such an approach to accommodation.

Title VII requires more. The "adopt[ion] [of] a week-to-week, wait-and-see posture . . . amounted to no accommodation at all. All that was in place was an ad hoc arrangement contemplating that the inevitable collision between . . . [Beadle's] religious beliefs and the [Sheriff's]

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[8]The EEOC *Guidelines on Discrimination Because of Religion* interprets Title VII as requiring "employers . . . [t]o facilitate the securing of a voluntary substitute . . . ." 29 C.F.R. § 1605.2(d)(1)(i). It also requires the employer to "consider whether or not it is possible to change the job assignment or give the employee a lateral transfer." 29 C.F.R. § 1605.2(d)(1)(iii).

work schedule [which] would be dealt with when it arose." *EEOC v. Arlington Transit Mix, Inc.*, 957 F.2d 219, 222 (6th Cir. 1991). Upper management waited for the axe to fall on Beadle, then wielded the axe at a time when lower level supervision had arranged an accommodation with absolutely no cost or hardship to the Sheriff's office or to any co-worker.[9] If such inaction satisfies the religious accommodation provisions of Title VII, then that law is impotent; and religious freedom cannot be protected in the work place. In short, Sabbatarians "need not apply."

Several courts have held for an accommodation to be reasonable, it must eliminate the conflict between the

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[9]Beadle asserts that the one-shot accommodation concept sanctioned by the Eleventh Circuit makes a mockery of Title VII's equal employment opportunity principle. Quoting *Haring v. Blumenthal*, 471 F. Supp. 1172 (D. D.C. 1979), *Brown v. General Motors Corp.*, 601 F.2d 956, 961 (8th Cir. 1979), stated:

> Unless the statutory mandate is to be rendered meaningless, it must be held to provide that until facts or circumstances arise from which it may be concluded that there can no longer be an accommodation without undue hardship, the employee's religious practices are required to be tolerated.

Under *Brown* the proper time frame of required accommodation continues until the moment when the employer can no longer provide an accommodation without experiencing undue hardship. This Court needs to clarify whether *Ansonia* is nevertheless consistent with *Brown*'s accommodation holding particularly when an earlier proffered accommodation proves unworkable and hence unreasonable.

employee's religious practices and his work requirements. Although not directly deciding the reasonableness of an accommodation that fails to eliminate the employee's religious conflict, Justice White sitting by designation and writing for the court in *Lee v. A.B.F. Freight Sys., Inc.*, 22 F.3d 1019, 1023 n.4 (10th Cir. 1994), observed: "At least two circuits have determined that, under *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 . . . (1986), a reasonable accommodation is one that *eliminates* the employee's conflict between his religious practices and work requirements. *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1380 (6th Cir. 1994); *Wright v. Runyon*, 2 F.3d 214, 217 (7th Cir. 1993), *cert. denied*, . . . 114 S. Ct. 1077 . . . (1994)." (Emphasis in original.) *See also EEOC v. Universal Mfg. Corp.*, 914 F.2d 71, 74 (5th Cir. 1990), where the court stated "[t]he *Ansonia* Court did not leave the employer free to choose an unreasonable form of accommodation over a reasonable one;" *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1085 (6th Cir. 1987), which held "[i]f the employer's efforts fail to eliminate the employee's religious conflict, the burden remains on the employer to establish that it is unable to reasonably accommodate the employee's religious beliefs without incurring undue hardship;" and *American Postal Workers Union, San Francisco Local v. Postmaster General*, 781 F.2d 772, 776 (9th Cir. 1986), where the court found the employer bears the burden of establishing that the proffered accommodation "effectively eliminates the religious conflict faced by a particular employee."

A recent Fourth Circuit decision found an employer's offer "to reduce the number of working Saturdays to as few as possible would not accommodate an employee whose religion prohibits working on any Saturday." *Benton v. Carded Graphics, Inc.*, No. 93-1675, slip op. at 2, 1994 WL 249221 (4th Cir. June 9, 1994) (unpublished). Unless the offered

accommodation "eliminates the conflict," it is not reasonable.

According to the Eleventh Circuit, the mere existence of neutral work rules justifies an employer's refusal to actively assist in accommodating its employees' religious requirements. This distorts *Hardison* into something it is not. The *Hardison* Court excused *only* employers precluded by seniority systems from accommodating their religious observers. Here the Sheriff's "accommodation," based on erroneous legal advice, was just to offer Beadle its existing scheduling system which the record amply proves provided no resolution of Beadle's conflict.

The Eleventh Circuit's decision, conflicting as it does with the Fourth and Sixth Circuits in *Ithaca Industries* and *Smith* adds new confusion to the employer's work place religious accommodation duty which *Hardison* and *Ansonia* sought to clarify. What guidance will other circuits take from this now unsettled area of Title VII law? Further, it provides an open invitation to employers to do nothing to accommodate the religious needs of their employees. Therefore, this Court's action is desperately needed to provide a correct interpretation of section 701(j) and to resolve the dispute between the Eleventh Circuit and other circuits as to whether an employer has a duty to effectively eliminate conflicts between work rules and an employee's religious needs.

II. BECAUSE THE DEPARTMENT HAS ALTERED ITS NEUTRAL SCHEDULING SYSTEM TO ACCOMMODATE FOR SECULAR NEEDS, SUCH AS SCHOOLING, IT MAY NOT WITHHOLD THIS METHOD OF ACCOMMODATION FOR RELIGIOUS NEEDS.

The court of appeals' decision conflicts with *Ansonia Bd. of*

Educ. v. Philbrook, 479 U.S. 60 (1986), in another important way. The Sheriff allowed employees to attend school by scheduling them to work undesirable shifts. Under that arrangement, an employee was *not* rotated from shift-to-shift. However, the Sheriff did not place Beadle on such an undesirable shift (which Beadle was willing to accept) because "that would have been contrary to what guidance was from legal . . . ." (R 5-120:7-8; R 7-49:16-52:16; Fitch Dep. at 25:1-29:24; 69:26-70:13).

In *Ansonia*, 479 U.S. at 71, this Court reversed and instructed the lower court to determine whether the collective bargaining leave with pay provisions had been "doled out in a discriminatory fashion." Failure to provide a religious observer with the same employment benefits for religious needs as that provided for secular needs "would display a discrimination against religious practices that is the antithesis of reasonableness." *Id.* Similarly, if the Sheriff's Department permits deviation from the neutral rotating shift for secular reasons, such as schooling, it may not withhold the same type of accommodation for religious reasons. Consistent with *Ansonia*, the Sheriff must provide relief from a neutral work rule (such as a rotating shift) for religious needs if it provides relief for secular reasons.

CONCLUSION

For the foregoing reasons, petitioner respectfully requests this petition be granted and a writ of certiorari issue to review the judgment and opinion of the Court of Appeals for the Eleventh Circuit.

Dated: March 31, 1995

Respectfully submitted,

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APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
ELEVENTH CIRCUIT

No. 93-3266

ASTON A. BEADLE,
Plaintiff-Appellant,

v.

HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT,
Walter C. Heinrich, Sheriff of
Hillsborough County, Florida,
Defendants-Appellees.

**Appeal from the United States District Court
for the Middle District of Florida**

Former employee of county prison brought suit against sheriff's department, contending that department violated Title VII by failing to accommodate his Seventh Day Adventist religious belief which precluded his working from sundown Friday to sundown Saturday, and by ultimately discharging him because of his refusal to work during that period. The United States District Court for the Middle District of Florida, No. 91-325-CIV-T-99A, Charles R. Wilson, United States Magistrate Judge, en-

tered judgment in favor of sheriff's department, and plaintiff appealed. The Court of Appeals, Morgan, Senior Circuit Judge, held that department's neutral rotating shift system and its authorization of shift swaps within system represented reasonable accommodation to plaintiff's religious beliefs, and thus his discharge from employment for refusing to work his sabbath did not violate Title VII.

Affirmed.

OPINION

Before COX, Circuit Judge, MORGAN, Senior Circuit Judge, and COLLIER*, District Judge.

MORGAN, Senior Circuit Judge:

Appellant Aston Beadle appeals a final judgment entered against him by the United States Magistrate Judge for the Middle District of Florida and in favor of the Hillsborough County Sheriff's Department ("Department").[1] The judgment rejects Beadle's contention that the Department violated Title VII of the Civil Rights Act of 1964 by failing to accommodate Beadle's religious practices and by ultimately discharging him from his employment with the Department because of his refusal to work on his sabbath. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we AFFIRM.

I. FACTUAL BACKGROUND

Appellant Beadle is currently, and has been at all times pertinent to this action, a member of the Seventh Day Adventist Church. As a practicing Seventh Day Adventist, Beadle does not engage in secular labor on his

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* Honorable Lacey A. Collier, U.S. District Judge for the Northern District of Florida, sitting by designation.

[1] The record indicates that the parties consented to trial by the Magistrate Judge.

sabbath—a period lasting from sundown Friday to sundown Saturday. Beadle, a former employee of the Hillsborough County Sheriff's Detention Department, brought this action after the Department scheduled him to work a Friday evening shift. Instead of completing his shift, however, Beadle left his post early in order to observe his sabbath. The Department subsequently terminated Beadle as a result of this action. Beadle's main contention at trial was that his discharge was unlawful under Title VII, as the Department had failed to "reasonably accommodate" his religious practices under the statute.

Beadle first became employed with the Sheriff's Detention Department in January of 1986, after responding to an advertised opening for employment. The Detention Department is responsible for securing the safety of the Hillsborough County prison and, as such, operates seven days a week, twenty-four hours a day, year round. Although Beadle was apparently aware of this fact when he applied for the position, he never mentioned his religious need for permanent days off until he had completed his required eleven-week training period at the Corrections Recruit Academy and had received his initial work schedule.

The schedule, made pursuant to a neutral rotating shift system used by the Sheriff's Department, indicated that Beadle's first shift required that he work on Fridays and Saturdays.[2] Dissatisfied with this requirement, Beadle

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[2] Under this neutral rotating shift system, detention employees were assigned to one of three overlapping 9.6 hour shifts each day. The day shift was from 7:00 A.M. until 4:36 P.M.; the evening shift was from 3:00 P.M. until 12:36 A.M.; and the midnight shift was from 11:00 P.M. until 8:36 A.M. Each deputy received two consecutive days off during the week. Work assignments rotated forward (i.e., day to evening; evening to midnight, etc.) every two months, while days off rotated backward (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday, etc.) every 28 days.

contacted his commanding officer, Colonel David Parrish, and notified him of his religious conflict with the schedule. Parrish responded by suggesting that Beadle make a written request for permanent Fridays and Saturdays off for the Department to consider. Beadle complied, and the Department then submitted the question of whether the law required such an accommodation to its legal advisor for an opinion. While waiting for the legal opinion, the Department adjusted Beadle's work schedule so that he would not be required to work his sabbath.

In April of 1986, the Sheriff's legal advisor responded with an opinion stating that the Department was not required under Title VII to accommodate Beadle by granting him permanent days off. Based on this opinion, the Department advised Beadle that his request had been rejected. Beadle was told, however, that he was free to arrange for shift swaps with the other employees. To aid in this effort, the Department provided Beadle with a roster sheet and authorized him to advertise his need for swaps during daily roll calls and on the Department's bulletin board. The Department further allowed Beadle to request use of his sick days, vacation time and compensation time if he was unable to secure a swap.

Beadle, however, was not satisfied with the Department's response. He maintained that at the very least, his Department supervisors should actively assist him in finding replacements for shifts which conflicted with his sabbath. He also suggested as an alternative that the Department allow him to leave his post as a detention officer and to work instead as a bailiff or as a process server—jobs with the Department which traditionally required only a normal Monday through Friday work week.[3] The Department denied these requests and

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[3] These alternative posts suggested by Beadle, however, additionally required completion of a certain employment probationary period with the Department which Beadle had yet to satisfy.

adhered to its original position that Beadle had been sufficiently accommodated for Title VII purposes.

Beadle was actually able to negotiate a swap with his co-workers on only two occasions.[4] Moreover, the Department did not always approve Beadle's requests for use of vacation or compensation time because the jail was understaffed and the granting of some of these requests could have jeopardized jail security. On one occasion when Beadle was scheduled to work his sabbath and was unable to obtain approval to use his compensation time or to negotiate a swap for his shift, he simply failed to come to work. On a second occasion, Beadle abandoned his post during the middle of his shift, leaving two other deputies alone to supervise an area of dangerous inmates. This second incident ultimately led to Beadle's termination.

II. DISCUSSION

Title VII of the Civil Rights Act of 1964, as amended, prohibits an employer from discriminating against an employee on the basis of that person's "race, color, religion, sex or national origin." 42 U.S.C. § 2000e-2(a)(1). The term "religion" is defined in the statute as including "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate . . . employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). The issue presented for our consideration on appeal is whether the Magistrate Judge erred in finding that the Department reasonably accommodated the religious practices of its employee, Aston Beadle, for purposes of Title VII.[5]

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[4] The Magistrate Judge, however, attributed at least some of this difficulty to the fact that Beadle failed to adequately advertise his need for swaps.

[5] The Department does not dispute that Beadle's religious beliefs were sincere, nor does it argue with the Magistrate Judge's finding

The phrases "reasonably accommodate" and "undue hardship" are not defined within the language of Title VII. Thus, the precise reach of the employer's obligation to its employee is unclear under the statute and must be determined on a case-by-case basis. *See United States v. City of Albuquerque*, 545 F.2d 110, 114 (10th Cir.1976), *cert. denied*, 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1977). To aid lower courts in their analysis of these cases, the Supreme Court has provided some guidance by generally defining "undue hardship" as any act that would require an employer to bear greater than a "de minimis cost" in accommodating an employee's religious beliefs. *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 75, 97 S.Ct. 2264, 2272, 53 L.Ed.2d 113 (1977). The Court has further stated that compliance with Title VII does not require an employer to give an employee a choice among several accommodations; nor is the employer required to demonstrate that alternative accommodations proposed by the employee constitute undue hardship. *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60, 68, 107 S.Ct. 367, 371, 93 L.Ed.2d 305 (1986). Rather, the inquiry ends when an employer shows that a reasonable accommodation was afforded the employee, regardless of whether that accommodation is one which the employee suggested. *Id.* We recognize and apply these guidelines in addressing the case before us.

Beadle argues that the Department failed to meet its duty to accommodate his religious practices. He contends that the Department's neutral rotating shift system and its authorization of shift swaps within the system were

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that Beadle established a prima facie case of religious discrimination according to the three part test set out in *Brener v. Diagnostic Center Hospital*, 671 F.2d 141, 144 (5th Cir.1982) (To establish a prima facie case of religious discrimination under Title VII, the plaintiff must present evidence sufficient to prove that (1) he had a bona fide religious belief that conflicted with an employment requirement; (2) he informed his employer of his belief; and (3) he was discharged for failing to comply with the conflicting employment requirement.).

insufficient to meet the requirements of Title VII. We disagree.

In *Hardison, supra*, the Supreme Court was presented with facts similar to those in this case. Hardison was a member of the Worldwide Church of God and also refrained from secular labor on Saturdays in observance of his sabbath. He was hired by Trans World Airlines (TWA) to work as a clerk in the "Stores Department" at its Kansas City base. This Department operated twenty-four hours per day, year round. Hardison was ultimately discharged because of his refusal to work Saturdays and argued that his discharge was unlawful under Title VII because TWA had failed to reasonably accommodate his religious practices. The Supreme Court, however, found that the seniority provisions contained in the collective bargaining agreement between TWA and the union provided such accommodation. Explaining its holding, the Court stated:

> It was essential to TWA's business to require Saturday and Sunday work from at least a few employees even though most employees preferred these days off. Allocating the burdens of weekend work was a matter for collective bargaining. In considering criteria to govern this allocation, TWA and the union had two alternatives: *adopt a neutral system*, such as seniority, a lottery, or *rotating shifts;* or allocate days off in accordance with the religious needs of its employees. TWA would have had to adopt the latter in order to insure Hardison and others like him of getting the days off necessary for strict observance of their religion, but it could have done so only at the expense of others who had strong, but perhaps non-religious reasons for not working on weekends.
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> . . . .
>
> Title VII does not contemplate such unequal treatment . . . . It would be anomalous to conclude that by 'reasonable accommodation' Congress meant

> that an employer must deny the shift and job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs others . . . .

Hardison, 432 U.S. at 80-81, 97 S.Ct. at 2274-75 (emphasis supplied).

Beadle attempts to distinguish the Court's holding in *Hardison* by arguing that there the Court was speaking not of a neutral rotating shift system, but rather of a "bona fide seniority system." While we recognize that *Hardison* specifically concerned the sufficiency of a seniority system under Title VII to determine employee eligibility for weekends off, we are not persuaded that the Court intended that its holding apply only to those systems. Rather, our reading of *Hardison* suggests that the Court was concerned primarily with the neutrality of the system utilized.

Moreover, the facts before us indicate that the Sheriff's Department did more than simply rely on its neutral rotating shift system to accommodate Beadle's religious practices. For example, it is undisputed that the Department allowed Beadle to arrange shift swaps with his co-workers. To aid Beadle in arranging these swaps, the Department provided him with an employee roster sheet which included all his co-worker's schedules. The Department also allowed Beadle to advertise his need for shift swaps during daily roll calls and on the Department's bulletin board. Numerous courts have relied on *Hardison* in holding that similar authorizations of voluntary swaps instituted by employers within neutral rotating shift systems constitute reasonable accommodations under Title VII. *See e.g., Brener v. Diagnostic Center Hosp.*, 671 F.2d 141 (5th Cir.1982); *Smith v. Pyro Mining Co.*, 827 F.2d 1081, 1088 (6th Cir.1987), *cert. denied,* 485 U.S. 989, 108 S.Ct. 1293, 99 L.Ed.2d 503

(1988); *United States v. City of Albuquerque,* 545 F.2d 110 (10th Cir.1976), *cert. denied,* 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1977). Our interpretation of *Hardison* leads us to the same conclusion in this case.

Finally, we believe it important to note the Magistrate Judge's finding that Beadle failed to take full advantage of the accommodations offered to him by the Department. Although the Department made provisions for Beadle to announce his need for shift swaps during roll call and to advertise his need for swaps on the Department's bulletin board, Beadle did neither of these. While we recognize an employer's duty to reasonably accommodate the religious practices of its employee, we likewise recognize an employee's duty to make a good faith attempt to accommodate his religious needs through means offered by the employer. *See Matthewson v. Fla. Game & Fresh Water Fish Comm'n,* 693 F.Supp. 1044, 1050 (M.D.Fla.1988), *aff'd* 871 F.2d 123 (11th Cir. 1989) (citing *Ansonia,* 479 U.S. at 68, 107 S.Ct. at 372, in recognition of the employee's duty of "bilateral cooperation"); *see also Chrysler Corp. v. Mann,* 561 F.2d 1282, 1285 (8th Cir.1977), *cert. denied,* 434 U.S. 1039, 98 S.Ct. 778, 54 L.Ed.2d 788 (1978). We find that the record adequately supports the Magistrate Judge's finding that Beadle failed to satisfy this duty.

Because we find that the Department reasonably accommodated Beadle's religious practices for purposes of Title VII, we are not required to further consider whether any or all of the accommodations suggested by Beadle would also qualify as "reasonable" under the statute, or whether they would likely result in "undue hardship" to the employer. Following the Supreme Court's decision in *Ansonia, supra* 479 U.S. at 68, 107 S.Ct. at 372, the inquiry ends once the employer shows, as the Department has here, that a reasonable accommodation was afforded the employee.

III. CONCLUSION

We find that the Department's attempts to accommodate appellant Beadle's religious practices within the workings of its neutral rotating shift system were "reasonable" for purposes of Title VII. We, therefore, hold that Beadle's discharge from employment with the Department for refusing to work his sabbath was neither discriminatory nor unlawful. Accordingly, we AFFIRM the holding of the Magistrate Judge.

AFFIRMED.

APPENDIX B

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 93-3266

ASTON A. BEADLE,
Plaintiff-Appellant,

versus

HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT;
WALTER C. HEINRICH, Sheriff of
Hillsborough County, FL,
Defendants-Appellees.

On Appeal from the United States District Court for the Middle District of Florida

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ON PETITION(S) FOR REHEARING AND SUGGESTION(S) OF REHEARING EN BANC

[Filed, U.S. Court of Appeals, Eleventh Circuit, Nov 3, 1994 (Clerk's Stamp)]

Before: COX, Circuit Judge, MORGAN, Senior Circuit Judge, and COLLIER*, District Judge.

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* Honorable Lacey A. Collier, U.S. District Judge for the Northern District of Florida, sitting by designation.

PER CURIAM:

☒ The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

☐ The Petition(s) for Rehearing are DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are also DENIED.

☐ A member of the Court in active service having requested a poll on the reconsideration of this cause en banc, and a majority of the judges in active service not having voted in favor of it, Rehearing En Banc is DENIED.

ENTERED FOR THE COURT:

/s/ [illegible] R. Cox
UNITED STATES CIRCUIT JUDGE

APPENDIX C

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

Case No. 91-325-Civ-T-99(A)

ASTON A. BEADLE,

Plaintiff,

-vs-

HILLSBOROUGH COUNTY SHERIFF'S OFFICE
a/k/a HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT
and WALTER C. HEINRICH, as Sheriff of
Hillsborough County, Florida,

Defendants.

OPINION

This is an action brought pursuant to Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et. seq. (Title VII). The issue is whether the Hillsborough County Sheriff's Office ("Sheriff") fulfilled his obligation to accommodate the religious beliefs and practices of his employee, Aston A. Beadle, as to Sabbath observance, pursuant to Title VII. The case was tried to the Court on June 21-25, 1993.

Having considered the evidence and the applicable authority, the Court is of the opinion that judgment

should be entered in favor of the defendant based upon the following findings of fact and conclusions of law.

FINDINGS OF FACT

The plaintiff, Aston A. Beadle, is a member of the Seventh-Day Adventist faith. One of the tenets of the faith is the prohibition of work on the Sabbath, which commences at sundown on Friday and ends at sundown on Saturday. Seventh-Day Adventists refrain from routine work on the Sabbath, although a Seventh-Day Adventist may engage in emergency or humanitarian work on that day.

On August 15, 1986, Beadle abandoned his post while on duty as a detention deputy at the Hillsborough County Jail due to a conflict between his work schedule and his Sabbath. A pre-disciplinary hearing was conducted by the Sheriff on August 29, 1986. After the hearing, Beadle was terminated because of abandonment of his assigned post and failure to work his shift as assigned. Beadle contends that his termination violated Title VII because the Sheriff failed to make a reasonable accommodation of his faith's tenets. The Sheriff contends that it made efforts to reasonably accommodate Beadle's religious beliefs.

Beadle's life's work is in law enforcement. He was a law enforcement officer in Jamaica prior to coming to this country. His law enforcement work in Jamaica did not conflict with his long-standing religious affiliation. Beadle's grandparents were Seventh-Day Adventists. He attended the church as a child, although he subsequently drifted away from the religion. He returned to the faith in 1974 and has been involved in the faith to the present. The Sheriff does not contest the sincerity of Beadle's religious beliefs and practices. Beadle is an elder in his congregation and assists the pastor in various duties and in presenting the message of the faith. He has also been a Sabbath school teacher, a personal ministry

leader, and a deacon in his church. His children have attended schools operated by the Seventh-Day Adventists.

In 1985, Beadle was a taxi driver and came upon a newspaper advertisement for a jail deputy position. He applied and was selected upon the recommendation of Colonel David M. Parrish. At the time, he was a regular member of the Progress Village Seventh-Day Adventist Church.

The Sheriff of Hillsborough County, Florida is an elected constitutional law officer who employs between 2,000 to 2,100 employees, and is an employer within the meaning of 42 U.S.C. § 2000e(b). Within this group are 600-700 sworn personnel. The Sheriff operates in three departments: Law Enforcement Operations, Administration and Detention. Each department is under the command of a colonel, and the departments are further broken down into districts or divisions under the command of subordinate officers such as majors or captains. The position for which Beadle applied fell under the command of Detention. Included within Detention were the operation of three jail facilities: the maximum security Morgan Street Jail; the medium security Clark Street Jail; and the minimum security Orient Road Jail, in addition to two work-release centers. Included within the department of Administration were the bailiffs' positions and court personnel.

After he was hired, Beadle participated in a two to three month Academy training program and then learned of his subsequent jail assignment and scheduling. The assignments were made pursuant to the neutral rotating shift system used by the Sheriff. Under this system, detention employees were assigned to one of three overlapping 9.6 hour shifts each day. The day shift was from 7:00 A.M. until 4:36 P.M. The evening shift was from 3:00 P.M. until 12:36 A.M.; and the midnight shift was from 11:00 P.M. until 8:36 A.M. Each deputy

also had two consecutive days off each work week. Under this shift system, each deputy shift assignment would rotate forward (i.e., day to evening, evening to midnight, etc.) every two months, and days off would rotate backward, (i.e., Friday-Saturday to Thursday-Friday; Thursday-Friday to Wednesday-Thursday, etc.) every 28 days.

Upon learning of this schedule which included work on his Sabbath, Beadle discussed the matter with his superiors, including Colonel Parrish, and advised them that as a member of the Seventh-Day Adventist Church he could not be involved in regularly scheduled duties on his Sabbath as such would violate his conscience and religious beliefs. Colonel Parrish asked Beadle to make a request in writing and his request would be considered. Upon receipt of Beadle's written request, the Department then requested a legal opinion from its legal advisor. During the pendency of the decision, a decision was made to adjust Beadle's work schedule so that it would not conflict with his Sabbath.

The Sheriff's legal advisor rendered a legal opinion on April 10, 1986 which relied upon and discussed a Supreme Court decision entitled *TransWorld Airlines, Inc. v. Hardison*, 432 U.S. 63, 97 S.Ct. 2264, 53 L.Ed.2d 113 (1977). The legal opinion stated:

> Other cases under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows such shift trading practice, I see no problem with requiring the employee to work Saturdays and have him work out the details of his shift trades with other employees.

The Department interpreted the legal opinion to mean that the Sheriff should accommodate Beadle by allowing shift trading with other detention deputies but not to

grant a permanent accommodation which would vary from the provisions of the rotating shift system. He was also granted an opportunity to use vacation, sick-day and compensation time when his work schedule conflicted with his Sabbath, to the extent available, and with prior approval.

Major Cook testified that their system of allowing swaps was an unusual event. This was the first time it had taken place for a significant period of time. Beadle was allowed to swap with anyone on his particular shift. He was successful on some occasions and unsuccessful on others. To assist Beadle in facilitating a swap, the Sheriff made access to a bulletin board available so that Beadle could use it to post his request. Also, a roster sheet was made available to him. Beadle failed to sufficiently avail himself of these opportunities. On his own, he was only able to successfully negotiate a swap with his fellow officers on two occasions.

Requests to use sick days, vacation, holiday and comp time to observe his Sabbath required pre-approval and on some occasions, his requests were denied. According to the Sheriff, the jail was understaffed and decisions to deny a request for compensation time was made in the interest of the security of the jail. Additionally, it was also difficult on some occasions to juggle the staff so as to ensure that a sufficient number of detention deputies were on duty at all times.

Beadle was unable to obtain compensation time or negotiate a swap for May 24, 1986. Although he was scheduled to work on that day, he failed to show for work because it conflicted with his Sabbath. He thereafter was able to use compensation time on May 31 and June 7, 1986, both Sabbath days. However, on August 15, 1986, when Beadle was assigned to a post containing high-risk inmates, Beadle abandoned the post during the middle of his shift, leaving the other two

deputies unattended in an area of dangerous inmates. This incident ultimately led to his termination.

During the course of his employment, Beadle suggested various alternatives that would accommodate his belief other than allowing requests for compensation time and swaps with fellow officers. Three alternative positions in particular were: (1) a position as a bailiff which primarily involved Monday through Friday work at the courthouse; (2) the Squad-10 Unit which is in charge of recreation, canteen, inmate properties, clinic, maintenance, etc., which is primarily a Monday through Friday position; and (3) a position in transportation as a process server. However, Beadle was advised that his one-year probationary status must expire before he could be eligible for transfer to such positions. In fact, the bailiff position was a very desired position within the Department and a number of factors, including seniority and performance, played a part in that assignment. These positions fell within the Administration Department. The Squad-10 and Transportation Departments were specialty assignments and not permanent assignments. In fact, the Squad-10 assignment no longer exists, according to the Sheriff. In any event, deputies are not ordinarily considered for assignment as a bailiff under a different department until the completion of his or her probationary period. Beadle was terminated prior to the completion of his probationary period.

Although Beadle's supervisors maintained their availability to assist Beadle in seeking swaps with his fellow shift officers, the officers expressed a reluctance to do so at the trial, maintaining that it would be coercive for supervisors to suggest to jail deputies that they swap with fellow deputies. A fellow deputy may be reluctant to deny a request by a supervisor for fear of jeopardizing his or her promotional opportunities.

At the trial, the Sheriff maintained that he fulfilled his obligation to accommodate the religious beliefs of Beadle

through the availability of the neutral rotating shift system, the allowance of swaps with fellow deputies, and the availability of vacation, sick day and compensation time.

After his termination, Beadle timely filed a charge of discrimination with the Equal Employment Opportunity Commission, received his right to sue letter, and initiated this action.

CONCLUSIONS OF LAW

The parties stipulated in their pretrial statement that this Court has jurisdiction of this action pursuant to 42 U.S.C. § 2000e-5(f)(3). The parties further agree that at all times pertinent to this action, the Sheriff was Beadle's "employer" and that Beadle was an "employee" as those terms are defined in 42 U.S.C. §§ 2000e(b) and 2000e(f), respectively. Additionally, the parties stipulate that Beadle satisfied the administrative prerequisites to maintaining this action.

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e-2(a)(1) makes it unlawful for an employer to discriminate against an employee or prospective employee on the basis of that individual's "race, color, religion, sex or national origin." The term "religion" includes "all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j).

To establish a prima facie case of religious discrimination, a plaintiff must demonstrate: (1) that he or she had a bona fide belief that compliance with an employment requirement would be contrary to his or her religious belief or practice; (2) that he or she informed the em-

ployer about the conflict; and (3) that he or she was discharged or penalized for failing to comply with the conflicting employment requirement. *Brener v. Diagnostic Center Hospital*, 671 F.2d 141, 144 (5th Cir. 1982)[1]. *Murphy v. Edge Memorial Hospital*, 550 F.Supp. 1185, 1187-88 (M.D. Ala. 1982). The Sheriff does not contest the sincerity of Beadle's religious beliefs. Further, the Court finds from the evidence that Beadle's religious beliefs conflict with the Saturday work requirements of the Sheriff and that Beadle informed the Sheriff of the conflict. The Court further finds that based upon the record of facts, Beadle was discharged for failing to comply with the requirement that he work his assigned shift which conflicted with his Saturday Sabbath.

After a Title VII plaintiff has established a prima facie case, the defendant must show that it offered the plaintiff a reasonable accommodation of his or her religious practices, or that any accommodation of a plaintiff's practices would result in undue hardship to the employer. 42 U.S.C. § 2000e(j). *Murphy v. Edge Memorial Hospital, supra*, 550 F.Supp. 1188.

"The duty to accommodate requires that the employer take affirmative steps to explore and implement alternatives which would satisfy an employee's religious practices without (1) compromising the employment entitlements of other employees or (2) conferring a privilege on the employee the cost of which is more than **de minimis**." *Murphy v. Edge Memorial Hospital, supra*, 550 F.Supp. 1188.

Since a prima facie case is established, the issue now becomes whether the accommodations made by the

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[1] This opinion is a decision of the Fifth Circuit which is accorded only persuasive authority in the Eleventh Circuit. *See Bonner v. City of Prichard, Alabama*, 661 F.2d 1206 (11th Cir. 1981) (en banc); *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33, 34 (11th Cir. 1982).

Sheriff meet the requirements of Title VII. This issue is resolved by the decision of the United States Supreme Court in *TransWorld Airlines, Inc. v. Hardison, supra.* In that case, Larry G. Hardison, a follower of the Worldwide Church of God, sued TransWorld Airlines (TWA) and the International Association of Machinists and Aerospace Workers, AFL-CIO (IAM), contending that TWA violated Title VII by failing to reasonably accommodate his religious beliefs. Hardison, like Beadle, belonged to a religion requiring observance of the Sabbath from sundown Friday to sundown Saturday. TWA discharged him, without accommodating his requests to have these days off, since shift assignments at its Kansas City, Missouri facility were based on a seniority system in accordance with a collective bargaining agreement. Due to Hardison's comparatively low seniority, and the union's unwillingness to modify the system on Hardison's belief, Hardison's religious beliefs could not meet an accommodation absent payment of overtime to another substitute employee or forcing the supervisor to take Hardison's place. The facility to which Hardison was assigned operated 24-hours a day throughout the year.

The Supreme Court found that the evidence established an absence of volunteers to relieve Hardison on Saturdays, and to give him Saturdays off would have deprived another employee of his or her shift preference "at least in part because he did not adhere to a religion that observed a Saturday Sabbath." *TransWorld Airlines, Inc. v. Hardison, supra,* 432 U.S. at 81, 97 S.Ct. at 2274. The Court concluded: "Absent a discriminatory purpose", the operation of a neutral scheduling system which was designed to meet the needs of all employees, "cannot be an unlawful employment practice even if the system has some discriminatory consequences." *TransWorld Airlines, Inc. v. Hardison, supra,* 432 U.S. at 82, 97 S.Ct. at 2276. The Court found that an employer is not required by Title VII to alter such a neutral scheduling system to meet the religious practices of an employ-

ee, but may satisfy the reasonable accommodation requirement by demonstrating efforts to accommodate an employee within the neutral system. According to the Court in *Hardison*, "[i]t would be anomalous to conclude that by 'reasonable accommodation' Congress meant that an employer must deny the shift in job preference of some employees, as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others, and we conclude that Title VII does not require an employer to go that far." *Trans-World Airlines, Inc. v. Hardison, supra,* 432 U.S. at 81, 97 S.Ct. at 2274. The Court evaluates reasonable accommodation in light of the employer's ability to accommodate an employee within the framework of the system established without denying the benefits of the system to other employees or incurring a greater than **de minimis** cost. As stated in *Murphy v. Edge, supra,* an accommodation is not required under Title VII when: (1) the accommodation will deprive the benefits of the neutral scheduling system to any other employee, or (2) will require the employer to incur a greater than **de minimis** cost." *Murphy v. Edge Memorial Hospital,* 550 F.Supp. 1189.

As stated in *Williams v. Southern Union Gas Company,* 529 F.2d 483, 489 (10th Cir.), *cert. denied,* 429 U.S. 959, 97 S.Ct. 381, 50 L.Ed.2d 325 (1976), the phrases "reasonably accommodate" and "undue hardship" are relative terms that cannot be given any hard and fast meaning. "Each case necessarily depends upon its own facts and circumstances, and in a sense every case boils down to a determination as to whether the employer has acted reasonably." *United States v. City of Albuquerque,* 545 F.2d 110, 114 (10th Cir.), *cert. denied,* 433 U.S. 909, 97 S.Ct. 2974, 53 L.Ed.2d 1092 (1976).

The Court finds that the neutral rotating shift system constituted a reasonable accommodation to Beadle within the meaning of Title VII. The neutral rotating

shift system has been found by the Courts to be an accepted form of accommodation under Title VII. *See TransWorld Airlines, Inc. v. Hardison, supra. United States v. City of Albuquerque, supra.* The Court further finds that the Sheriff made reasonable accommodations within the neutral rotating shift system by affording Beadle the opportunity to use vacation, sick day and compensation time to the extent that his shift conflicted with his faith's Sabbath and to swap days with fellow officers. Further, to require the Sheriff to assign Beadle to a permanent shift which would exclude work on Saturdays would be to confer upon him a benefit exclusive of the benefits conferred upon his fellow jail deputies, which Title VII does not require, according to *TransWorld Airlines, Inc. v. Hardison.*

Because of the public health, safety and welfare implications of law enforcement work, conferring upon Beadle the privilege of a permanent day off each week in this circumstance is more than a **de minimis** requirement. Obviously, in any work place, there are accommodations that must be made without adherence to rigid regulations that operate in an unreasonable fashion. Employers must take into consideration such factors as military leave, pregnancy leave, sick leave, bereavement leave, vacation and religious holidays. However, the neutral rotating shift system was meant to accommodate the secular and non-secular needs of all employees of the Sheriff's work force. The operation of the Sheriff's Office is a 24-hour a day, 7-day a week, 365-day a year operation. Its purpose is to maintain a work-force that secures inmates and preserves the safety of the public. Detention involves a continuous routine of watching, listening and observing in a confining, stressful and dangerous environment. Mistakes can lead to death, escape or injury. Special permanent days off for an employee in particular could adversely affect staff morale and jeopardize safety and security. The allowance of a permanent weekly day off to an employee in a detention facility

ee in a detention facility which operates under a neutral rotating shift system is inconsistent with sound jail management.

Beadle argues that the Sheriff could have afforded him a reasonable accommodation by assigning him to a position as a bailiff. However, in *Ansonia Board of Education v. Philbrook,* 479 U.S. 60 107 S.Ct. 367, 93 L.Ed.2d 305 (1986), the Supreme Court stated "where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship." *Id.*, at 68. *Ansonia* further provides that in enacting the reasonable accommodation requirement of Title VII, "Congress was understandably motivated by a desire to assure the individual additional opportunity to observe religious practices, but it did not impose a duty on the employer to accommodate at all costs." *Id.*, at 70 (citing *TransWorld Airlines, Inc. v. Hardison, supra*). Further, the bailiff position was unavailable to Beadle due to his failure to complete the one-year probationary period. The specialty squads including Squad-10 and transportation, also require completion of probationary status and they are not permanent positions. Therefore, they would not have permanently accommodated Beadle's needs.

In *United States v. Albuquerque, supra,* the Tenth Circuit stated that Courts should "go slow in restructuring . . . employment practices" when a public employer is in the business of "protecting the lives and property of a dependent citizenry". *Id.*, 545 F.2d at 114. In *Ryan v. United States Department of Justice,* 950 F.Supp. 458, 462 (7th Cir.), *cert. denied,* 112 S.Ct. 2309, 119 L.Ed.2d 230 (1991), when faced with an action by an FBI agent against the United States Department of Justice claiming religious discrimination under Title VII due to denial of Sabbath observance, the Seventh Circuit concluded:

"[c]ompelled, as it is by Title VII, to have one rule for all of the diverse religious beliefs and practices in the United States, the FBI may choose to be stingy with exceptions less the demand for them overwhelm it." *Id.*, at 462.

Based on the foregoing authority and analysis, the Court finds that the neutral rotating shift system used by the Sheriff in conjunction with the availability of the use of vacation, compensation and sick day time and swaps with fellow officers were reasonable accommodations sufficient to meet the requirements of Title VII in this case. Therefore, the Clerk is directed to enter judgment for the defendant.

ORDERED on this 1st day of October, 1993.

/s/ Charles R. Wilson
CHARLES R. WILSON
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:
Counsel of Record

APPENDIX D

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

Case Number 91-325-Civ-T-99A

ASTON A. BEADLE

v.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE
a/k/a HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT
and WALTER C. HEINRICH as Sheriff of
Hillsborough County, Florida

JUDGMENT IN A CIVIL CASE

[Filed Oct 4, 1993, 1:32 pm, U.S. District Court, Middle District of Florida, Tampa Division (Clerk's stamp)]

☐ **Jury Verdict.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **Decision by Court.** This action came to trial before the Court. The issues have been tried and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that based on the opinion dated October 1, 1993, (Doc. 71) judgment is entered in favor of the defendant.

October, 4, 1993 DAVID L. EDWARDS, Clerk
By /s/ Jeanne L. Hueting, Deputy Clerk

M'FILM ROLL #106
DOCUMENT #550

APPENDIX E

[SEAL] Miami District Office
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Metro — Mall
One Northeast First Street, 6th Floor
Miami, Florida 33132
Phone (305) 536-4491

Charge No: 151 87 0199

Mr. Aston Beadle
1414 West Linebaugh
Tampa, Florida 33612 Charging Party

Hillsborough County Sheriff's Dept.
1301 N. Morgan Street
Tampa, Florida 33601 Respondent

DETERMINATION

Under the authority vested in me by the Commission, I issue the following determination as to the merits of the subject charge filed under Title VII of the Civil Rights Act of 1964, as amended.

All requirements for coverage have been met. Charging Party alleged that he was discriminated against in violation of Title VII in that Respondent failed to accommodate his religious beliefs and as a direct result he was discharged on November 13, 1986, from his position as a Deputy Sheriff. Charging Party had been employed in a probationary status as a Deputy Sheriff since January 13, 1986.

The evidence shows that Respondent failed to facilitate or foster an atmosphere in which voluntary substitutions could be made during Charging Party's observance of his sabbath. In addition, there were no efforts made to reassign the Charging Party to available duties which did not require him to work on his sabbath, even though the Charging Party had nearly completed

his probationary period and did not have any performance or job related problems. The investigation disclosed that the Respondent had never accommodated anyone in the past as a result of their religious belief.

Based on this analysis, I have determined that the evidence obtained during the investigation establishes a violation of Title VII of the Civil Rights Act of 1964, as amended.

Section 706(b) of Title VII requires that if the Commission determines that there is reason to believe that violations have occurred, it shall endeavor to eliminate the alleged unlawful employment practices by informal methods of conference, conciliation, and persuasion. Having determined that there is reason to believe that violations have occurred, the Commission now invites the parties to join with it in a collective effort toward a just resolution of this matter. A representative of this office will be in contact with each party in the near future to begin the conciliation process. Disclosure of information obtained by the Commission during the conciliation process will be made in accordance with Section 706(b) of Title VII and Section 1601.26 of the Commission's Procedural Regulations. When the Respondent declines to enter into settlement discussions, or when the Commission's representative for any other reason, is unable to secure a settlement acceptable to the office Director, the Director shall so inform the parties in writing and advise them if [sic] the court enforcement alternative available to the Charging Party, aggrieved persons, and the Commission.

On Behalf of the Commission:

/s/ [illegible]
for Federico Costales
District Director

FC/AF/ca

DATE OF MAILING July 29, 1988

APPENDIX F

SUPREME COURT OF THE UNITED STATES

No. A-541

Aston A. Beadle,

Petitioner

v.

Hillsborough County Sheriff's Department, et al.

ORDER

UPON CONSIDERATION of the application of counsel for the petitioner,

IT IS ORDERED that the time for filing a petition for a writ of certiorari in the above-entitled case, be and the same is hereby, extended to and including March 31, 1995.

/s/ Anthony M. Kennedy
Associate Justice of the Supreme
Court of the United States

Dated this 26th day of January, 1995.

APPENDIX G

PART 1605—GUIDELINES ON DISCRIMINATION BECAUSE OF RELIGION

Sec.

1605.1 "Religious" nature of a practice or belief.

1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of theCivil Rights Act of 1964.

1605.3 Selection practices.

Appendix A to §§ 1605.2 and 1065.3 Background information.

Authority: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e et seq.

§ 1605.1 "Religious" nature of a practice or belief.

In most cases whether or not a practice or belief is religious is not at issue. However, in those cases in which the issue does exist, the Commission will define religious practices to include moral or ethical beliefs as to what is right and wrong which are sincerely held with the strength of traditional religious views. This standard was developed in *United States v. Seeger,* 380 U.S. 163 (1965) and *Welsh v. United States,* 398 U.S. 333 (1970). The Commission has consistently applied this standard in its decisions.[1] The fact that no religious group espouses such beliefs or the fact that the religious group to which the individual professes to belong may not accept such belief will not determine whether the belief is a religious belief of the employee or prospective employee. The phrase "religious practice" as used in these Guidelines includes both religious observances and practices, as stated in Section 701(j), 42 U.S.C. 2000e(j).

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[1] See CD76-104 (1976), CCH P 6500; CD 71-2620 (1971), CCH P 6283; CD 71-779 (1970), CCH P 6180.

§ 1605.2 Reasonable accommodation without undue hardship as required by Section 701(j) of Title VII of the Civil Rights Act of 1964.

(a) *Purpose of this section.*

This section clarifies the obligation imposed by Title VII of the Civil Rights Act of 1964, as amended, (sections 701(j), 703 and 717) to accommodate the religious practices of employees and prospective employees. This section does not address other obligations under Title VII not to discriminate on grounds of religion, nor other provisions of Title VII. This section is not intended to limit any additional obligations to accommodate religious practices which may exist pursuant to constitutional, or other statutory provisions; neither is it intended to provide guidance for statutes which require accommodation on bases other than religion such as § 503 of the Rehabilitation Act of 1973. The legal principles which have been developed with respect to discrimination prohibited by Title VII on the bases of race, color, sex, and national origin also apply to religious discrimination in all circumstances other than where an accommodation is required.

(b) *Duty to accommodate.*

(1) Section 701(j) makes it an unlawful employment practice under § 703(a)(1) for an employer to fail to reasonably accommodate the religious practices of an employee or prospective employee, unless the employer demonstrates that accommodation would result in undue hardship on the conduct of its business.[2]

(2) Section 701(j) in conjunction with § 703(c), imposes an obligation on a labor organization to reasonably accommodate the religious practices of an employee or prospective employee, unless the labor organization demonstrates that accommodation would result in undue hardship.

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[2] See *Trans World Airlines, Inc. v. Hardison*, 432 U.S. 63, 74 (1977).

(3) Section 1605.2 is primarily directed to obligations of employers or labor organizations, which are the entities covered by Title VII that will most often be required to make an accommodation. However, the principles of Section 1605.2 also apply when an accommodation can be required of other entities covered by Title VII, such as employment agencies (§ 703(b)) or joint labor-management committees controlling apprenticeship or other training or retraining (§ 703(d)). (See, for example, § 1605.3(a) "Scheduling of Tests or Other Selection Procedures.")

(c) *Reasonable Accommodation.*

(1) After an employee or prospective employee notifies the employer or labor organization of his or her need for a religious accommodation, the employer or labor organization has an obligation to reasonably accommodate the individual's religious practices. A refusal to accommodate is justified only when an employer or labor organization can demonstrate that an undue hardship would in fact result from each available alternative method of accommodation. A mere assumption that many more people, with the same religious practices as the person being accommodated, may also need accommodation is not evidence of undue hardship.

(2) When there is more than one method of accommodation available which would not cause undue hardship, the Commission will determine whether the accommodation offered is reasonable by examining:

(i) The alternatives for accommodation considered by the employer or labor organization; and

(ii) The alternatives for accommodation, if any, actually offered to the individual requiring accommodation. Some alternatives for accommodating religious practices might disadvantage the individual with respect to his or her employment opportunities such as compensation, terms, conditions, or privileges of employment. Therefore, when there

is more than one means of accommodation which would not cause undue hardship, the employer or labor organization must offer the alternative which least disadvantages the individual with respect to his or her employment opportunities.

(d) *Alternatives for Accommodating Religious Practices.*

(1) Employees and prospective employees most frequently request an accommodation because their religious practices conflict with their work schedules. The following subsections are some means of accommodating the conflict between work schedules and religious practices which the Commission believes that employers and labor organizations should consider as part of the obligation to accommodate and which the Commission will consider in investigating a charge. These are not intended to be all-inclusive. There are often other alternatives which would reasonably accommodate an individual's religious practices when they conflict with a work schedule. There are also employment practices besides work scheduling which may conflict with religious practices and cause an individual to request an accommodation. See, for example, the Commission's finding number (3) from its Hearings on Religious Discrimination, in Appendix A to §§ 1605.2 and 1605.3. The principles expressed in these Guidelines apply as well to such requests for accommodation.

(i) Voluntary Substitutes and "Swaps".

Reasonable accommodation without undue hardship is generally possible where a voluntary substitute with substantially similar qualifications is available. One means of substitution is the voluntary swap. In a number of cases, the securing of a substitute has been left entirely up to the individual seeking the accommodation. The Commission believes that the obligation to accommodate requires that employers and labor organizations facilitate the securing of a voluntary substitute with substantially similar qualifications. Some means of doing this which employers and

labor organizations should consider are: to publicize policies regarding accommodation and voluntary substitution; to promote an atmosphere in which such substitutions are favorably regarded; to provide a central file, bulletin board or other means for matching voluntary substitutes with positions for which substitutes are needed.

(ii) Flexible Scheduling.

One means of providing reasonable accommodation for the religious practices of employees or prospective employees which employers and labor organizations should consider is the creation of a flexible work schedule for individuals requesting accommodation.

The following list is an example of areas in which flexibility might be introduced: flexible arrival and departure times; floating or optional holidays; flexible work breaks; use of lunch time in exchange for early departure; staggered work hours; and permitting an employee to make up time lost due to the observance of religious practices.[3]

(iii) Lateral Transfer and Change of Job Assignments.

When an employee cannot be accommodated either as to his or her entire job or an assignment within the job, employers and labor organizations should consider whether or not it is possible to change the job assignment or give the employee a lateral transfer.

(2) Payment of Dues to a Labor Organization.

Some collective bargaining agreements include a provision that each employee must join the labor organization or pay the labor organization a sum equivalent to dues. When an employee's religious practices do not permit com-

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[3] On September 29, 1978, Congress enacted such a provision for the accommodation of Federal employees' religious practices. See Pub. L. 95-390. 5 U.S.C. 5530a, "Compensatory Time Off for Religious Observances."

pliance with such a provision, the labor organization should accommodate the employee by not requiring the employee to join the organization and by permitting him or her to donate a sum equivalent to dues to a charitable organization.

(e) Undue Hardship.

(1) Cost.

An employer may assert undue hardship to justify a refusal to accommodate an employee's need to be absent from his or her scheduled duty hours if the employer can demonstrate that the accommodation would require "more than a *de minimis* cost".[4] The Commission will determine what constitutes "more than a *de minimis* cost" with due regard given to the identifiable cost in relation to the size and operating cost of the employer, and the number of individuals who will in fact need a particular accommodation. In general, the Commission interprets this phrase as it was used in the *Hardison* decision to mean that costs similar to the regular payment of premium wages of substitutes, which was at issue in *Hardison,* would constitute undue hardship. However, the Commission will presume that the infrequent payment of premium wages for a substitute or the payment of premium wages while a more permanent accommodation is being sought are costs which an employer can be required to bear as a means of providing a reasonable accommodation. Further, the Commission will presume that generally, the payment of administrative costs necessary for providing the accommodation will not constitute more than a *de minimis* cost. Administrative costs, for example, include those costs involved in rearranging schedules and recording substitutions for payroll purposes.

(2) Seniority Rights. Undue hardship would also be shown where a variance from a bona fide seniority system is

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[4] *Hardison, supra,* 432 U.S. at 84.

necessary in order to accommodate an employee's religious practices when doing so would deny another employee his or her job or shift preference guaranteed by that system. *Hardison, supra,* 432 U.S. at 80. Arrangements for voluntary substitutes and swaps (see paragraph (d)(1)(i) of this section) do not constitute an undue hardship to the extent the arrangements do not violate a bona fide seniority system. Nothing in the Statute or these Guidelines precludes an employer and a union from including arrangements for voluntary substitutes and swaps as part of a collective bargaining agreement.

§ 1605.3 Selection practices.

(a) Scheduling of Tests or Other Selection Procedures. When a test or other selection procedure is scheduled at a time when an employee or prospective employee cannot attend because of his or her religious practices, the user of the test should be aware that the principles enunciated in these guidelines apply and that it has an obligation to accommodate such employee or prospective employee unless undue hardship would result.

(b) Inquiries Which Determine An Applicant's Availability to Work During An Employer's Scheduled Working Hours.

(1) The duty to accommodate pertains to prospective employees as well as current employees. Consequently, an employer may not permit an applicant's need for a religious accommodation to affect in any way its decision whether to hire the applicant unless it can demonstrate that it cannot reasonably accommodate the applicant's religious practices without undue hardship.

(2) As a result of the oral and written testimony submitted at the Commission's Hearings on Religious Discrimination, discussions with representatives of organizations interested in the issue of religious discrimination, and the comments received from the public on

these Guidelines as proposed, the Commission has concluded that the use of pre-selection inquiries which determine an applicant's availability has an exclusionary effect on the employment opportunities of persons with certain religious practices. The use of such inquiries will, therefore, be considered to violate Title VII unless the employer can show that it:

(i) Did not have an exclusionary effect on its employees or prospective employees needing an accommodation for the same religious practices; or

(ii) Was otherwise justified by business necessity.

Employers who believe they have a legitimate interest in knowing the availability of their applicants prior to selection must consider procedures which would serve this interest and which would have a lesser exclusionary effect on persons whose religious practices need accommodation. An example of such a procedure is for the employer to state the normal work hours for the job and, after making it clear to the applicant that he or she is not required to indicate the need for any absences for religious practices during the scheduled work hours, ask the applicant whether he or she is otherwise available to work those hours. Then, after a position is offered, but before the applicant is hired, the employer can inquire into the need for a religious accommodation and determine, according to the principles of these Guidelines, whether an accommodation is possible. This type of inquiry would provide an employer with information concerning the availability of most of its applicants, while deferring until after a position is offered the identification of the usually small number of applicants who require an accommodation.

(3) The Commission will infer that the need for an accommodation discriminatorily influenced a decision to reject an applicant when: (i) prior to an offer of employment the employer makes an inquiry into an applicant's availability without having a business necessity justification;

and (ii) after the employer has determined the applicant's need for an accommodation, the employer rejects a qualified applicant. The burden is then on the employer to demonstrate that factors other than the need for an accommodation were the reason for rejecting the qualified applicant, or that a reasonable accommodation without undue hardship was not possible.

Supreme Court, U.S.
FILED
MAY 3 1995
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No. 94-1610

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

Aston A. Beadle,
Petitioner,

v.

Hillsborough County Sheriff's Office a/k/a Hillsborough County Sheriff's Department, and Walter C. Heinrich, as Sheriff of Hillsborough County, Florida,
Respondent.

On Petition for A Writ of Certiorari To The United States Court of Appeals For the Eleventh Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether the Trial Court and the Eleventh Circuit Court of Appeals erred in holding that the Hillsborough County Sheriff's Office made reasonable accommodation to Aston Beadle's religious beliefs.

II. Whether the Trial Court and the Eleventh Circuit Court of Appeals erred in holding that Aston Beadle failed to use his best efforts to work within the reasonable accommodations offered to him.

PARTIES TO THE PROCEEDING

Petitioner: Aston A. Beadle

Respondents: Hillsborough County Sheriff's Office a/k/a Hillsborough County Sheriff's Department, Walter C. Heinrich, as Sheriff of Hillsborough County

Walter C. Heinrich, the employer, as Sheriff of Hillsborough County, Florida, is an elected constitutional officer of the state of Florida and had control and supervision of the Hillsborough County Sheriff's Office and its employees. He therefore has no parent companies or subsidiaries. Respondent makes this declaration pursuant to Supreme Court Rule 29.

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No. 94-1610

IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1994

ASTON A. BEADLE,

Petitioner,

vs.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE, A/K/A HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT, and WALTER C. HEINRICH, as Sheriff of Hillsborough County, Florida,

Respondents.

OPINIONS BELOW

The opinion of the Court of Appeals for the Eleventh Circuit is reported at 29 F.3d 589 (11th Cir. 1994).

The Memorandum Opinion of the United States District Court for the Middle District of Florida, Tampa Division, which was entered on October 1, 1994, is reported and reprinted in the appendix at pages 19A-25A in Petitioner's Petition for Writ of Certiorari.

JURISDICTION

Invoking federal jurisdiction under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, *et seq.*, and under 28 U.S.C. § 1331 (general federal question jurisdiction),

the petitioner brought this suit in the United States District Court for the Middle District of Florida, Tampa Division. On October 4, 1993, the district court entered judgment on the merits in favor of the Defendants.

In response to petitioner's appeal, the Eleventh Circuit on August 23, 1994, entered a judgment and order affirming the district court's judgment. Thereafter a timely petition for rehearing and suggestion(s) for rehearing en banc was filed. The court of appeals on November 3, 1994, entered an order denying the petition for rehearing and suggestion(s) for rehearing en banc.

The jurisdiction of this Court to review the judgment of the Eleventh Circuit is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 2000e-2(a) provides:

It shall be an unlawful employment practice for an employer --

> (1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or
>
> (2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because

of such individual's race, color, religion, sex, or national origin.

42 U.S.C. § 2000e(j) provides:

The term "religion" includes all aspects of religious observance and practice, as well a belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

STATEMENT OF THE CASE

A. Relevant Facts

The events which were the subject of this action took place within Defendant's Detention Department. During 1986, in addition to two work release centers, Defendant operated three jails: the maximum security Morgan Street Jail; the medium security Clark Street jail; and the minimum security Orient Road jail (R1-21-VIII.F, G, H; R4-71-3, 4).

In 1986, Defendant's detention employees were assigned to one of three overlapping 9.6 hour shifts each day. Each deputy also had two consecutive days off each work week (R6-79-195). Under Defendant's neutral shift rotation system, each deputy's shift assignment would rotate forward (i.e., day to evening, evening to midnight, etc.) every two months, and days off would rotate backward (i.e., Friday/Saturday to

Thursday/Friday) every 28 days (R6-79-195; R4-71-4).[1]

Plaintiff's initial schedule assigned him to work on his Sabbath. Plaintiff had a discussion with Colonel Parrish at the conclusion of the academy in which Plaintiff advised Colonel Parrish that he was a Seventh Day Adventist and he requested Saturdays off from work (R1-21-Y). Colonel Parrish instructed Plaintiff to put his request in writing (Id.; R4-71-4, 5). Colonel Parrish reserved his decision on whether an accommodation would be made pending receipt of a legal opinion from the Sheriff's legal advisor (Id.). During the pendency of this request for a legal opinion, Colonel Parrish directed Major Cook to be sure that Plaintiff's initial days off be adjusted such that he would not be required to work on his Sabbath (R6-79-48, 114-115, 254; R4-71-5).

On April 10, 1986, the Sheriff's legal advisor, David Farash, rendered a legal opinion in which Mr. Farash responded to the question, "Does the Sheriff's Office have to allow a Seventh Day Adventist every Saturday off work?" Farash responded as follows:

---

[1] At no time during Plaintiff's job interview, during his employee orientation or his training at the academy, did Plaintiff mention his religious needs to be accommodated. Only after completing the academy did Plaintiff mention his needs to be off work on Saturdays. This is true notwithstanding the fact that Plaintiff always knew the job was a 24 hour a day, seven day a week job.

> Other cases under the Civil Rights Act have looked to whether an employee was given a chance to secure his religious holidays off from work by trading shifts with other employees. Since the Sheriff's Office allows such shift trading practice, I see no problem with requiring the employee to work Saturdays and having him work out the details of his shift trades with other employees (DX 13; R4-71-5).

Shortly after the legal opinion was rendered, Lieutenant Deaton advised Plaintiff that his request for a permanent day off had been denied (R5-78-68). On May 9, 1986, Major Cook and Plaintiff met and discussed the legal opinion and how the Department would continue to try to work with Plaintiff within the meaning of the legal opinion (DX 15,16; R5-78-69, 70; R6-79-50, 51). The primary method by which Defendant and Major Cook attempted to accommodate Plaintiff was to allow Plaintiff to trade days off with other deputies (R6-79-48, 51). In addition to allowing swapping, Plaintiff was also allowed to use sick days, vacation, holiday and compensatory ("comp") time to observe his Sabbath (DX 53; Deitch 17, 18; R6-79-160). In helping facilitate his swaps, Major Cook gave a specific instruction to Plaintiff and to his jail supervisors that Plaintiff should be allowed to trade days off and that his supervisors should assist him in any way possible to allow him to communicate with deputies to request trading days off (R6-79-49, 51, 54, 71).

To further help facilitate the swaps for the Plaintiff, he had access to a bulletin board that he could use to post his request (R6-79-53,

131, 192; R4-71-6). Additionally, a roster sheet was available to the Plaintiff (R5-78-161; R4-71-6). Moreover, after roll call, deputies were also allowed to make any announcements such as a request to swap days off (R6-79-53, 130). Plaintiff never availed himself of these opportunities (R5-78-160; R6-79-132, 206; R4-71-6). Even though Plaintiff wrote various memos to his superiors (see, e.g., DX 11, 15, 16, 17, 22, 24), he never wrote any memo complaining about the inability to swap days off (R5-78-161). Even though Colonel Parrish told Plaintiff to come see him if he was having trouble finding someone to swap days off with him, Plaintiff never talked to Colonel Parrish about his problems finding other deputies to swap days off (R5-78-162;R6-79-210, 261).

On May 24, 1986, Plaintiff failed to show up for work (DX 22, 23; PX 21; R6-79-116-117; R4-71-6). Sergeant Fitch recommended Plaintiff's termination as a result of his no show on May 24, 1986 (DX 22). Plaintiff was not terminated but rather counseled by Major Cook regarding the seriousness of his violation (R6-79-65, 68). On Friday evening, August 15, 1986, Plaintiff was assigned the tower to 200 Central (R6-79-124; R4-71-6). Two Hundred Central is where the high-risk inmates are housed (R6-79-112; R4-71-6). The deputy assigned to the tower is responsible for observing the safety of the two other deputies who are assigned inside the cell and locked behind two double doors (Id.; R4-71-6). On that evening, Plaintiff abandoned his post and left the two deputies unattended with the most dangerous inmates behind double locked doors thereby endangering their lives (R6-79-65, 96, 124, 125).

In all, Plaintiff either failed to show up to work or abandoned his post during the middle

of his shift on eight (8) separate occasions (see DX 22, 23, 27, 29, 31, 32, 33, 40, 41, 42, 43, 45, 46, 47 and 48; R5-78-136). Plaintiff conceded that he failed to show up at work even when he knew that his request for time off had been denied (R5-78-119). In short, absent exceptional circumstances, Plaintiff admitted that he was not going to work his Sabbath regardless whether he was scheduled or not (R5-78-80; R6-79-68, 116-117, 118). As a result of Plaintiff's failure to report to work on May 24, 1986, and his abandonment of his post on August 16, 1986, discipline was initiated against Plaintiff (DX 29, 37; R6-79-67, 68).

Under the Sheriff's operating procedures and as mandated by law, a pre-disciplinary hearing was held on August 29, 1986 (PX 33; R4-71-2). On September 12, 1986, Major Cook recommended Plaintiff's termination (DX 37). After careful consideration of the recommendation, Colonel Parrish recommended to Sheriff Heinrich that Plaintiff be terminated (DX 44). Sheriff Heinrich concurred in the recommendation (DX 49; Heinrich 44; R4-71-2).

Plaintiff claimed that there were a number of accommodations (transfers) available to him by which he would not be required to work on his Sabbath. Plaintiff was not even eligible for these transfers because he had not completed his probation, which lasted for one year (R6-79-59-62, 147, 148, 158, 168-170, 174-175, 188-189; Cook 33; R4-71-7). Plaintiff also understood that he had to apply for these transfers and there was no guarantee that he would get the transfers in the future (R5-78-186; R6-79-267). Even if Plaintiff had been transferred to a bailiff's position or to a specialty squad, this still would not have solved all the problems. Specifically, bailiffs are sometimes called upon

to work Friday nights and Saturdays (Heinrich 52, 53; Cook 25). Transportation works seven (7) days a week (Davenport 31). Squad 10 (a recreational squad performing various functions within the jail, including exercising the prisoners, running the canteen and similar such assignments) does not necessarily work Monday-Friday (R6-79-188).

B. The Trial Court's Decision

The trial court found in favor of the Defendants. Specifically, the trial court held:

> [T]he Court finds that the neutral rotating shift system used by the Sheriff in conjunction with the availability of the use of vacation, compensation and sick day time and swaps with fellow officers were reasonable accommodations sufficient to meet the requirements of Title VII in this case.

In addition, in focusing on the issue of undue hardship, the trial court also found:

> Because of the public health, safety and welfare implications of law enforcement work, conferring upon Beadle the privileges of a permanent day off each week in this circumstance is more than a de minimis requirement.
>
> * * *
>
> The operation of the Sheriff's Office is a 24-hour a day, 7-day a week, 365-day a year operation. Its purpose is to maintain a work-force

> that secures inmates and preserves the safety of the public. Detention involves a continuous routine of watching, listening and observing and a confining, stressful and dangerous environment. Mistakes can lead to death, escape or injury. Special permanent days off for an employee in particular could adversely affect staff morale and jeopardize safety and security. The allowance of a permanent weekly day off to an employee in a detention facility which operates under a neutral rotating shift system is inconsistent with sound jail management.

C. The Court of Appeals Decision

The Eleventh Circuit Court of Appeals affirmed the trial court's decision. In affirming the decision of the lower court, the Eleventh Circuit held, among other things, the following:

> We find the Department's attempts to accommodate appellant Beadle's religious practices within the workings of its neutral rotating shift system were "reasonable" for purposes of Title VII. We, therefore, hold that Beadle's discharge from employment with the Department for refusing to work his sabbath was neither discriminatory nor unlawful.

In addition, the Eleventh Circuit also disagreed with Beadle's interpretation of Trans World Airlines, Inc. v. Hardison, 432 U.S. 63 (1977) and stated:

> Beadle attempts to distinguish the Court's holding in Hardison by arguing that there the Court was speaking not of a neutral rotating shift system, but rather of a 'bona fide seniority system.' While we recognize that Hardison specifically concerned the sufficiency of a seniority system under Title VII to determine employee eligibility for weekends off, we are not persuaded that the Court intended that its holding apply only to those systems. Rather, our reading of Hardison suggests that the Court was concerned primarily with the neutrality of the system utilized.

In analyzing the facts of this case in relation to the Hardison decision, the Eleventh Circuit concluded:

> [I]t is undisputed that the Department allowed Beadle to arrange shift swaps with his co-workers. To aid Beadle in arranging these swaps, the Department provided him with an employee roster sheet which included all his co-worker's schedules. The Department also allowed Beadle to advertise his need for shift swaps during daily roll calls and on the Department's bulletin board. Numerous courts have relied on Hardison in holding that similar authorization of voluntary swaps instituted by employers with a neutral rotating shift systems constitute a reasonable accommodation under Title VII. See, e.g., Brener v. Diagnostic Center Hosp., 671 F.2d

141 (5th Cir. 1982); Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989, 108 S. Ct. 1293, 99 L.Ed. 2d 503 (1988); United States v. City of Albuquerque, 545 F.2d 110 (10th Cir. 1977), cert. denied, 433 U.S. 909, 97 S. Ct. 2974, 53 L.Ed. 2d 1092 (1977). Our interpretation of Hardison leads us to the same conclusion in this case.

Finally, the Eleventh Circuit, in discussing Beadle's obligation to work with the reasonable accommodations offered to him, found the following:

> Finally, we believe it important to note the Magistrate Judge's finding that Beadle failed to take full advantage of the accommodations offered to him by the Department. Although the Department made provisions for Beadle to announce his need for shift swaps during roll call and to advertise his needs for swaps on the Department's bulletin board, Beadle did neither of these. While we recognize an employer's duty to reasonably accommodate the religious practices of its employee, we likewise recognize an employee's duty to make a good faith attempt to accommodate his religious needs through means offered by an employer. (Citations omitted). We find that the record adequately supports the Magistrate Judge's finding that Beadle failed to satisfy this duty.

REASONS FOR DENYING THE WRIT

The Court of Appeals correctly held that employers satisfy their duty of reasonable accommodation by working within their neutral rotating shift system.

In his Petition, Beadle primarily relies upon two decisions in support of his position why this Court should grant his Writ of Certiorari. The first is Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988). In Smith, there was no discussion whether the defendant employed a neutral rotating shift system such as the one used by the Defendant in this action. In any event, the Smith decision supports the conclusions reached by the lower courts in this action. Specifically, in Smith, the employer argued that it met its duty of reasonable accommodation under Title VII by consenting to shift swapping. 827 F.2d at 1086. The Smith court noted:

> Undoubtedly, one means of accommodating an employee who is unable to work a particular day due to religious convictions is to allow the employee to trade work shifts with another qualified employee. Other circuits have held that when an employer allows such a trade, it has reasonably accommodated its employees. See, e.g., Brener, 671 F.2d at 146; Albuquerque, 545 F.2d at 114.

Id. at 1088. In Smith, the court found that allowing the plaintiff to swap shifts was not a reasonable accommodation in this particular case since the employee's religious beliefs

prohibited from arranging a shift swap for himself. Id. The Smith case is clearly distinguishable from this case because there is no dispute that Plaintiff Beadle's religion did not prohibit him from having others arrange shift swaps for him. As a matter of fact, at trial, Plaintiff Beadle continually suggested that the Sheriff's Office should make other employees swap shifts with him. In Smith, the court noted that but for Smith's religious objections of having other people arrange shift swaps for him, the defendant's practice of allowing shift swapping was a reasonable accommodation to the plaintiff. Specifically, in Smith, the court noted:

> We think it clear that if Smith had no religious qualms about asking others to work the Sundays he was scheduled to work, then Pyro's proposed accommodation [shift swapping] would have been reasonable.

Id. at 1088. Based upon the above holding, it is clear that Smith supports the decision of the lower courts and not the position taken by the Plaintiff in this action.

Plaintiff Beadle also relies upon EEOC v. Ithaca Indus., Inc., 829 F.2d 519 (4th Cir. 1987), rev'd, 849 F.2d 116 (en banc), cert. denied, 488 U.S. 924 (1988). Ithaca Industries did not employ a neutral rotating shift system such as that used by the Defendant. In Ithaca Industries, the employer apparently asked for volunteers to work on Saturday, and if the company could not find enough volunteers, they would select additional workers. The *en banc* Fourth Circuit Court of Appeals reversed the district court's finding which found in favor of the company concluding that Ithaca had made no

effort to accommodate Dean, but that an absolute refusal to work on Sunday was so unreasonable on its face, that no reasonable accommodation was possible. The *en banc* court reversed because it found that the employer made no efforts to accommodate the plaintiff. It noted that in Hardison, TWA made several efforts to accommodate the employee, including, among other things, job swaps. The Ithaca Industries court also cited the EEOC regulations which provide that a means of accommodating religious practices include voluntary swapping. Therefore, Ithaca Industries did not really address itself with the issue of a neutral rotating shift system. More importantly, Ithaca Industries found that employee swapping was a means of accommodating an employee's religious beliefs.

There is no conflict within the circuits, as suggested by Plaintiff Beadle, to warrant this Court to exercise its discretionary jurisdiction. Simply put, as the Eleventh Circuit noted, courts have uniformly held that when an employer allows voluntary swaps within its neutral rotating shift system and further accommodates the employee by facilitating those swaps, even if unsuccessful, an employer has met its duty of reasonable accommodation and, therefore, the statutory inquiry is at an end. See Ansonia Bd. of Educ. v. Philbrook, 479 U.S. 60 (1986).

A. DEFENDANT WAS NOT REQUIRED TO GO BEYOND ITS NEUTRAL ROTATING SHIFT SYSTEM TO FURTHER ACCOMMODATE PLAINTIFF'S RELIGIOUS BELIEFS

Both lower courts correctly relied, in part, upon the holding of Trans World Airlines, Inc. v. Hardison, supra (R4-71-11-13). In

Hardison, supra, the Supreme Court explained that Title VII does not require a defendant to alter its neutral rotating shift system. In Hardison, the trial court ruled in favor of defendant TWA, and the Eighth Circuit reversed holding essentially that TWA made "no more than negligible" efforts to accommodate the plaintiff. Id. at 70. Implicit in the findings of the Eighth Circuit was that TWA had failed in its duty to reasonably accommodate by not working out a job swap for the plaintiff. Thus the central issue before the Supreme Court then was whether TWA was required to alter its seniority system. The Supreme Court reversed the Eighth Circuit, holding instead that:

> The system itself represented a significant accommodation to the needs, both religious and secular, of all of TWA's employees. As will become apparent, the seniority system represents a neutral way of minimizing the number of occasions when an employee must work on a day that he would prefer to have off.

Id. at 78 (emphasis supplied). Explaining further, the Court discussed the competing interests:

> It was essential to TWA's business to require Saturday and Sunday work from at least a few employees even though most employees preferred those days off. Allocating the burdens of weekend work was a matter for collective bargaining. In considering criteria to govern this allocation, TWA and the union had two alternatives: adopt a neutral system, such as seniority, a lottery,

> or rotating shifts; or allocate days off in accordance with the religious needs of its employees. TWA would have had to adopt the latter in order to insure Hardison and others like him of getting the days off necessary for strict observance of their religion, but it could have done so only at the expense of others who had strong, but perhaps non-religious reasons for not working on weekends. There were no volunteers to relieve Hardison on Saturdays and to give Hardison Saturdays off, TWA would have had to deprive another employee of his shift preference at least in part because he did not adhere to a religion that observed the Saturday Sabbath.

Id. at 80-81 (emphasis supplied). The Supreme Court resolved that, "Title VII does not contemplate such unequal treatment." Id. at 81. The Court concluded that it would be "anomalous" to find that a definition of reasonable accommodation under Title VII required an employer to deny shift preferences to some employees to accommodate the religious needs of others. Id. In summation, the Court held, "[a]bsent a discriminatory purpose, the operation of a seniority system cannot be an unlawful employment practice even if the system has some discriminatory consequences." Id. at 82 (emphasis supplied).

Following Hardison, several courts have confirmed the Supreme Court's interpretation that an employer may meet its duty of reasonable accommodation by simply operating within the existing framework of its neutral scheduling system. For example, in Murphy v. Edge Memorial

Hosp., 550 F. Supp. 1185 (M.D. Ala. 1982), the court first noted Hardison's holding that the operation of a neutral scheduling system cannot be an unlawful practice even if it has discriminatory consequences. Id. at 1188-89, citing Hardison, 432 U.S. at 82. Rather than finding some affirmative duty to alter such a scheduling system, the Murphy court, in ruling in favor of the defendant employer, reasoned:

> It is therefore apparent from Hardison that an employer in meeting his Title VII obligation as to the religious practices of his employees, is not required to alter such a neutral scheduling system, but may satisfy the reasonable accommodation requirement by demonstrating efforts to accommodate an employee within the neutral system.

550 F. Supp. at 1189 (emphasis added). Likewise, the Fifth Circuit addressed this same issue in Eversley v. MBank Dallas, 843 F.2d 172 (5th Cir. 1988). In Eversley, the plaintiff claimed that MBank should have either required one of the two individuals on the earlier (non-conflicting) shift to switch with him, or in the alternative, to demonstrate that it would have suffered undue hardship by requiring such a trade. Id. at 175.

The Fifth Circuit rejected the plaintiff's claim and, in accord with the Supreme Court's decision in Hardison and the Fifth Circuit's earlier decision in Brener, supra, the court held:

> [W]e conclude that it is unreasonable and an undue hardship on an employer to require an employer to force

> employees, over their express refusal, to permanently switch from a daytime to a nighttime shift in order to accommodate another employee's different Sabbath observation.

Id. at 176.

B. DEFENDANT MADE REASONABLE ACCOMMODATIONS TO THE PLAINTIFF BEYOND ITS NEUTRAL ROTATING SHIFT SYSTEM

Both lower courts correctly cited to a number of cases where an employer's actions within a neutral rotating shift system of permitting employees to trade days off was found to be a sufficient form of accommodation.[2] In addition to those cases cited by the trial court and the Eleventh Circuit, in Miller v. Drennon, 1991 WL 325291, 56 Fair Empl. Prac. Cas. (BNA) 274 (D. S.C. 1991), aff'd, 966 F.2d 1443 (4th Cir. 1992) the court considered the efforts of a county emergency medical service ("EMS") to accommodate the religious beliefs of a paramedic. To accommodate plaintiff, defendant distributed a memorandum to other EMS employees stating that voluntary shift swapping was permissible unless it would incur additional overtime and was purely voluntary. Defendant also provided plaintiff with a list of fellow EMS employees with telephone numbers to allow plaintiff to contact such employees for purposes of swapping shifts. Id. at 276-77. This is practically the same type of accommodation which the Magistrate Judge and the Eleventh Circuit

---

[2] In the instant action, the evidence at trial showed that this is precisely what Defendant did by permitting Plaintiff to swap days off with other employees.

found in this case that Defendant offered Plaintiff, but he refused to effectively utilize.

The Miller court noted Hardison's holding that, "An employer which follows neutral, rotating shift schedule is not required to rearrange its scheduled in order to accommodate the religious practices of an employee." Miller v. Drennon, 56 Fair Empl. Prac. Cas. at 278, citing Hardison, 432 U.S. at 63, 84. The court also cited Brener, supra, Murphy, supra, and City of Albuquerque, supra, and found that defendant had met its burden of reasonable accommodation because it:

> [A]uthorized EMS technicians and senior paramedics to swap shifts with each other. Indeed the county provided plaintiff with a list of names and telephone numbers to facilitate his arranging to swap shifts with someone whenever he was scheduled to work with a female at one of the three substations to which he objected. The county also authorized plaintiff to use leave to avoid assignments when they presented a conflict with his religious beliefs.

Id. at 279. Additionally, in Moore v. A.E. Staley Mfg. Co., 727 F. Supp. 1156 (N.D. Ill. 1989), the court found a system of voluntary swaps within seniority based shift systems to be sufficient accommodation. In Moore, to accommodate plaintiff, the employer and the union, "[a]ctively solicited voluntary swaps from [plaintiff's] coworkers." The court granted summary judgment in favor of the defendants, finding:

> Staley and the Union maintain that their program of support and solicitation of voluntary swaps constitutes a reasonable accommodation. We agree and find that the system of voluntary swaps instituted by defendants was a reasonable accommodation. There is considerable authority to support this proposition (emphasis added).

727 F. Supp. 1160, citing Smith v. Pyro Mining Co., 827 F.2d 1081, 1088 (6th Cir. 1987), cert. denied, 485 U.S. 989 (1988); Brener v. Diagnostic Center Hosp., 671 F.2d 141, 146 (5th Cir. 1982)("[u]ndoubtedly" permitting voluntary trades of days off is reasonable accommodation); City of Albuquerque, 545 F.2d at 114; and Eversley, 843 F.2d at 176.

In the instant case, both lower courts found that as a method of accommodation, Plaintiff was permitted to swap days off with fellow deputies, and, indeed, he did so on several occasions. Several officers in Plaintiff's chain of command gave directions for subordinate officers to find deputies who are willing to swap with Plaintiff. Moreover, as the lower courts found, "[T]o assist Beadle in facilitating a swap, the Sheriff made access to a bulletin board available so that Beadle could use it to post his request. Also, a roster sheet was made available to him" (R4-71-6).

C. DEFENDANT'S ACCOMMODATIONS EXCEEDED TITLE VII REQUIREMENTS ESPECIALLY WHEN CONSIDERING DEFENDANT'S NATURE OF BUSINESS

Both Plaintiff and Defendants agree with the lower courts' statement that the analysis of

reasonable accommodation under Title VII is made on a case-by-case basis. The Tenth Circuit explained, "The phrases 'reasonably accommodate' and 'undue hardship' . . . are relative terms and cannot be given any hard and fast meaning. Each case necessarily depends upon its facts and circumstances, and in a sense every case boils down to a determination as to whether the employer has acted reasonably." City of Albuquerque, 545 F.2d at 114. Because the courts utilize a case-by-case analysis, it follows that an employer's duties to accommodate varies from case to case. In City of Albuquerque, supra, the Tenth Circuit best summarized the balancing of interest between the public's health, safety, and welfare and the employee's Title VII rights when it stated:

> In our view when the 'business' of an employer is protecting the lives and property of a dependent citizenry, courts should go slow in restructuring his employment practices (citations omitted).

Id. at 114.

Other than City of Albuquerque, there are few Title VII religious accommodation cases involving public employers in a public safety, law enforcement or correctional function. The sole correctional case of which Defendant is aware is Blair v. Graham Correctional Center, 782 F. Supp. 411 (C.D. Ill. 1992), aff'd, 4 F.3d 996 (7th Cir. 1993), cert. denied, 114 S. Ct. 924 (1994). In Blair, the court considered a Seventh Day Adventist correctional officer's claim of religious discrimination against the Illinois Department of Corrections. Much like the Tenth Circuit in City of Albuquerque, in analyzing reasonable accommodation under Title

VII, the Blair court reasoned, "[i]n a paramilitary organization, it is even more difficult to accommodate employees who are restricted as to their assignments in view of the fact that the demands may overwhelm the organization." 782 F. Supp. at 414. The court applied this standard to a correctional facility:

> The personnel structure of Graham Correctional Center is analogous to a paramilitary organization. This Court notes the importance to the public interest in having a full staff of corrections officers on duty every hour of every day of the week, including sabbaths and religious holidays and in an institution such as Graham Correctional Center. Obviously, most everyone prefers not to work weekends and holidays. . . . If Defendants were required to amend the union agreement in order to accommodate all employees; religious practices, they would run the risk of having the correctional institutions undermanned, thereby endangering other employees and society.

782 F. Supp. at 414.

Similarly, the court considered the mission of the defendant employer, the FBI, in Ryan v. U.S. Dept. of Justice, 950 F.2d 458 (7th Cir. 1991), cert. denied, 112 S. Ct. 2309 (1992). In Ryan, an FBI agent refused a case assignment based on a personal religious belief which prevented him from investigating anti-military activity. In upholding the employer's discharge, the Seventh Circuit commented:

> Sympathy for a dedicated agent trapped between his career and his faith comes easily . . . It is difficult for any organization to accommodate employees who are choosy about assignments. For a paramilitary organization, the tension is even greater. . . . With good will all around, and flexibility on the part of Ryan's fellow agents, it just might be possible to make a go of it. Title VII does not, however, compel the FBI to attempt this . . . Compelled, as it is by Title VII, to have one rule for all of the diverse religious beliefs and practices in the United States, the FBI may choose to be stingy with exceptions lest the demand for them overwhelm it.

Id. at 462. This same rationale is compelling in the instant case. Plaintiff's apparent demand that he has no responsibility for finding an employee with whom to exchange days off and placing the onus on Defendant to either search for such deputies itself, or presumably, to relent and allow Plaintiff Beadle a special scheduling privilege--notwithstanding staffing demands--is simply not compelled by Title VII law either in terms of the consistent interpretation of Hardison, or as Defendant further urges, that in a paramilitary organization such as that used by Defendant.

D. DEFENDANT'S ACCOMMODATION OF ALLOWING PLAINTIFF TO TRADE DAYS OFF WAS REASONABLE EVEN IF PLAINTIFF WAS NOT ALWAYS ABLE TO FIND VOLUNTEERS WITH WHOM TO SWAP

Plaintiff argues in his Petition that at least at times, he was unable to find other detention deputies with whom he could trade days off to avoid working on his Sabbath. Plaintiff then concludes that because the accommodation did not work all of the time, it was not a reasonable accommodation.

In Moore v. A.E. Staley Mfg. Co., 727 F. Supp. 1156 (N.D. Ill. 1989), the Court rejected a similar assertion by the plaintiff. In particular, the plaintiff in Moore argued to the court that because under the voluntary swap system there still existed a conflict with his religious belief, there was no reasonable accommodation. The court disagreed, reasoning:

> [p]laintiff suggests that unless the measures proposed by the employer completely eliminate the possibility of a religious conflict, they cannot be reasonable. This absolutist interpretation of an employer's burden of accommodation is inconsistent with the thrust of judicial treatment of the issue.
>
> For example, Moore's interpretation of Title VII is inconsistent with the cases involving voluntary swap programs. Any voluntary system is at the mercy of its volunteers; the system will not work perfectly should co-workers be unwilling to swap. However, despite this possibility

> that voluntary swaps will not always resolve a scheduling conflict, courts have held that the programs are reasonable accommodations.

Id. at 1161, citing Brener, 671 F.2d at 145. See also Miller, supra, ("Of course, plaintiff's latitude to avoid shifts was limited by his abilities to find a substitute and by certain minimum staffing requirements. But these same limitations were present in Brener, City of Albuquerque, and Murphy, in all of which the courts found the duty of reasonable accommodation satisfied) 56 Fair Empl. Prac. Cas. (BNA) at 279, and Blair, supra, ("Consequently, this court finds that Graham Correctional Center and the Department of Corrections made reasonable -- albeit unsuccessful -- attempts to accommodate Blair's religious beliefs . . .") 782 F. Supp. at 414.

This holding is reasonable especially when read in context with the Hardison line of cases. If, as the Supreme Court held in Hardison, a neutral rotating shift system is a reasonable accommodation per se, then efforts to work within that system, even if not totally successful, must a fortiori constitute a reasonable accommodation.

E. PLAINTIFF'S ARGUMENT THAT AN ACCOMMODATION WHICH DOES NOT GUARANTEE THE ELIMINATION OF THE CONFLICT IS NOT REASONABLE IS WITHOUT MERIT

In support of his position that in order for an accommodation to be reasonable, it must eliminate the conflict between the employee's religious practice and his work requirements, Plaintiff relies on Lee v. ABF Freight Sys. Inc., 22 F.3d 1019, 1023 n.4 (10th Cir. 1994).

As conceded by the Plaintiff, the Lee court did not specifically rule whether an accommodation which does not eliminate the conflict is unreasonable. Specifically, in Lee, the court noted, "In this case, we do not decide whether a reasonable accommodation is one which must completely eliminate the employee's conflict." 22 F.3d at 1023 n.4. More importantly, in affirming the district court's summary judgment order in favor of the defendant employer, the Lee court noted:

> ABF's method of allocating 'runs' based on seniority was itself a significant accommodation of all of its employees.

22 F.3d at 1022 (emphasis supplied).

Another decision relied upon by Beadle in support of his position that the accommodation must eliminate the conflict in order to be reasonable, and one cited in the Lee decision, Wright v. Runyon, 2 F.3d 214 (7th Cir. 1993), cert. denied, 114 S. Ct. 1077 (1994), the Seventh Circuit affirmed the district court's summary judgment order in favor of the defendant employer. In affirming the district court's summary judgment order, the Seventh Circuit noted:

> Not only was the bidding process itself a reasonable accommodation, but Rudolph also suggested to Wright that he would think about some other options before submitting his resignation. The USPS admittedly did not investigate every possible way in which Wright could avoid a conflict between his work requirements and his religious practices, but, by

> providing at least one reasonable accommodation, the USPS discharged its obligations, citing Ansonia Bd. of Educ. v. Philbrook, 107 S.Ct. at 372.
>
> * * *
>
> Perhaps there were other steps that could have been taken here that would have allowed Wright to continue working at the USPS without infringing his religious convictions. We believe, however, that the USPS has done all that Title VII requires and, therefore, that it is entitled to summary judgment.

2 F.3d at 217 and 218.

Finally, the other decision cited in Lee and also relied upon by Plaintiff Beadle, Cooper v. Oak Rubber Co., 15 F.3d 1375 (6th Cir. 1994), also held in favor of the defendant employer on plaintiff's claim of religious discrimination. Interestingly, the Cooper decision concerned itself with whether the defendant employer could have accommodated the employee's religious objections to Saturday work without undue hardship to its business rather than if the employer made reasonable accommodations to the plaintiff employee. In finding in favor of the employer, the Cooper court noted, "It is evident that the only accommodation acceptable to Cooper would have been the elimination of any requirement that she work or report for work on Saturdays." 15 F.3d at 1379. In holding in favor of the defendant employer, the Cooper court held:

> Finally, it is no answer to suggest that Oak could have permitted one fewer employee to be on vacation or otherwise absent in order to allow Cooper every Saturday off. As noted by the Court in Hardison, it 'would be anonymous to conclude that by "reasonable accommodation" Congress meant that an employer must deny the shift and job preferences to some employees as well as deprive them of their contractual rights, in order to accommodate or prefer the religious needs of others.' Citing Hardison, 432 U.S. at 81.

15 F.3d at 1380. Accordingly, even the cases cited by Beadle do not support the position that an accommodation is unreasonable unless it guarantees the elimination of the conflict.

G. PLAINTIFF'S ARGUMENT THAT DEFENDANT HAD A DUTY TO NEGOTIATE AND WORK WITH HIM IN REGARD TO FINDING A REASONABLE ACCOMMODATION IS ALSO WITHOUT MERIT

Plaintiff has also suggested that Defendant had a statutory duty to sit down and negotiate with him in an attempt to work out a reasonable accommodation. The law simply does not require such action. Specifically, as stated above, in Ansonia, supra, the Supreme Court stated:

> Thus, where the employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship. As Hardison illustrates,

> the extent of undue hardship on the employer's business is at issue only where the employer claims that it is unable to offer any reasonable accommodation without such hardship.
>
> * * *
>
> We accordingly hold that an employer has met its obligations under § 701(j) when it demonstrates that it has offered a reasonable accommodation to the employee.

479 U.S. at 69 (emphasis added).

H. PLAINTIFF'S ARGUMENTS THAT DEFENDANT MUST PROVIDE FURTHER ACCOMMODATIONS ARE WITHOUT MERIT

Plaintiff finally suggests that Defendant's actions, in permitting Plaintiff to swap days off with other deputies, represented no real accommodation because such swapping was permitted for other reasons. Plaintiff suggests that it was incumbent upon Defendant to make some sort of affirmative initiation of an accommodation and then to engage in a type of bargaining process with Plaintiff over the accommodations.

This supposed requirement of negotiation runs afoul of recent Supreme Court decision in Ansonia, supra. In Ansonia, the Court explained:

> That by its very terms the statute directs that any reasonable accommodation by the employer is sufficient to meet its accommodation obligation . . .. Thus, where the

> employer has already reasonably accommodated the employee's religious needs, the statutory inquiry is at an end. The employer need not further show that each of the employee's alternative accommodations would result in undue hardship.

Id. at 68. Under Ansonia, there is no bargaining contemplated if the employer has accommodated an employee. Moreover, if the employer accommodated the employee through an existing system, the inquiry is at an end.

CONCLUSION

Plaintiff has made the same legal arguments to the Magistrate Judge and the Eleventh Circuit as he does to this Court. Both lower courts have properly disagreed with his interpretation of the law. Both lower courts have correctly applied United States Supreme Court and Eleventh Circuit precedents in ruling that the Hillsborough County Sheriff's Office did not discriminate against him, the Sheriff's Office afforded him reasonable accommodations in accordance with the requirements of Title VII and that Plaintiff did not take full advantages of the accommodations offered to him. Accordingly, there has been no error committed by either of the lower courts and there is no reason why this Court should grant Plaintiff's Petition for Writ of Certiorari.

Dated this 2nd day of May, 1995.

Respectfully submitted,

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No. 94-1610

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

ASTON A. BEADLE,

Petitioner,

v.

HILLSBOROUGH COUNTY SHERIFF'S OFFICE,
A/K/A/ HILLSBOROUGH COUNTY SHERIFF'S DEPARTMENT,
AND WALTER C. HEINRICH, AS SHERIFF
OF HILLSBOROUGH COUNTY, FLORIDA,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

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50 U. Pitt. L. Rev. 513 (1989) 2

Petitioner asks this Court to instruct whether Title VII requires an employer, absent a collective bargaining agreement's constraints, to do more than woodenly apply neutral work rules when to do so unevenly burdens Sabbatarians, requiring them to choose between their religion or their job. The Sheriff asserts that this Court held "in [*Trans World Airlines, Inc. v.] Hardison,* [432 U.S. 63 (1977),] a neutral rotating shift system is a reasonable accommodation per se." Opp. at 25.[1]

The Sheriff challenges Beadle's claim that a reasonable accommodation must eliminate the conflict between the employee's religious practices and his work requirements. Opp. at 25-28. May an employer offer a neutral rotating shift as an accommodation even if it causes the work conflict? May an employer define accommodation as job swaps for both religious and secular purposes when such swaps prove to be unworkable? Does *Hardison* say an employer need not affirmatively search for a workable accommodation if it simply adheres to its neutral work rules?

1. The Sheriff claims there is no conflict among the circuits over whether a neutral rotating shift system is a reasonable accommodation *per se*. But this argument is beside the point because Beadle's claim is broader. The Eleventh Circuit's holding that an employer satisfies Title VII's accommodation duty by merely adhering to neutral work rules (Pet. App. at 8a) is in conflict with at least two other circuits: *Smith v. Pyro Mining Co.*, 827 F.2d 1081 (6th Cir. 1987), and *EEOC v.*

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[1]At the trial the Sheriff's counsel likewise argued that "under *Hardison*, the fact that we had a neutral rotating shift system as a matter of law is a significant accommodation to Beadle. Therefore, the statutory inquiry is at an end." R6-13:4-8. He added, "once we allowed the swap, that it didn't work is of no consequence." R6-24:17-21.

Ithaca Industries, Inc., 849 F.2d 116 (4th Cir. 1988).

Ithaca Industries, 829 F.2d 519 (1987), before reversing itself *en banc*, like the Eleventh Circuit here, held that, in following its neutral scheduling system, the employer had fulfilled its duty to reasonably accommodate. As noted by one commentator:

> Thus, as Ithaca Industries did not offer Dean a method of accommodation that resolved his conflict, it should have been required, pursuant to *Ansonia*, to prove that other no-cost alternatives would have created an undue hardship. Instead, by refusing to evaluate no-cost methods of accommodation even after the employer did not offer to accommodate the employee, the Fourth Circuit panel, in effect, required neither reasonable accommodation *nor* a showing of undue hardship. . . .
>
> A majority of the Fourth Circuit recognized these problems, and the case was subsequently reversed by the court sitting en banc. . . . Beyond this, *Ithaca Industries*, like *Pyro Mining* and *Hardison*, goes beyond *Ansonia* in clearly refusing to allow employers to satisfy their duty to accommodate simply by adhering to a neutral work rule.

Peter Zablotsky, *After the Fall: The Employer's Duty to Accommodate Employee Religious Practices Under Title VII After* Ansonia Board of Education v. Philbrook, 50 U. Pitt. L. Rev. 513, 571-72 (1989).

In *Edward J. DeBartolo Corp. v. NLRB*, 463 U.S. 147, 153 (1983), this Court found a conflict involving a question of interpretative methodology also provides a proper basis for

review.

2. The Sheriff concedes Beadle swapped days off with his coworkers. Opp. at 20. Yet the Sheriff's opposition is particularly striking for what it does not dispute, to wit:

(a) Uncontradicted testimony confirmed other deputies were unwilling to swap shifts with Beadle, Pet. at 18;[2]

(b) When job swaps and the use of comp time did not work to solve his religious needs, Beadle requested a transfer to a bailiff position, Pet. at 5;[3]

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[2]Because it is uncontradicted that deputies were unwilling to voluntarily trade with Beadle, the Sheriff can't rely on Major Cook's instructions to Beadle's supervisors that he be allowed to trade days off, Opp. at 5; or to suggest that Beadle had authority to use the Department's bulletin board, employee roster sheets, or to advertise his need during roll call. Opp. at 10. Communication with Beadle's coworkers was not the problem. The problem, as Lieutenant Deaton testified, was that Beadle was unable to find anyone willing to swap and the Department would no longer permit Beadle to use comp time. R6-172:21-173:14. The Sheriff insinuates Beadle never spoke with Colonel Parrish about difficulties finding someone with whom to swap. Opp. at 6. But Parrish had told Beadle Captain Cook would be handling his Sabbath scheduling problems. R5-68:23-69:14; 151:5-23. Hence, Beadle reported to Cook about his swap attempts. Cook testified that though Beadle often asked for help, swapping was difficult. R6-53:17-54:8.

[3]The Sheriff argues there was no guarantee Beadle would get such a transfer in the future. Opp. at 7. However, Captain Cook testified vacancies did occur fairly regularly. Cook Dep. at 22:2-24:20. Also, although the Sheriff argues that even if Beadle had been transferred the problem would not have been solved because bailiffs *sometimes* were called upon to work on Friday nights and Saturdays, Opp. at 7-8, Deaton testified the bailiff's position would have been a perfect accommodation because bailiffs normally did not work weekends. R6-162:2-166:3. The simple fact is the Department did not consider transferring Beadle to the bailiff's

(c) The Sheriff had the authority, prior to Beadle's completion of probation, to transfer him to a bailiff's position, Pet. at 5;

(d) Although it would not have caused a safety problem to transfer Beadle prior to completion of his probation, the Sheriff refused offering only neutral rotating shift and job swaps, Pet. at 6;

(e) The Sheriff did exempt from the scheduling arrangement employees attending school but refused to permit such an accommodation for Beadle because that would have been contrary to guidance from legal counsel, Pet. at 6;

(f) When Beadle was fired, his immediate supervisor had just transferred him to a shift that would have allowed him to complete his probation without having to work on his Sabbath, thus facilitating a post-probation transfer to a position not requiring weekend work. Such an arrangement cost the Department nothing and was actually beneficial since it equalized the squads and did not displace any coworker, Pet. at 7; and

(g) The Sheriff asked Beadle to choose between working on his Sabbath and not being terminated or refusing to compromise his religious beliefs and being fired. Pet at 7.[4]

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position; failed to explore whether any other deputies were even seeking such a transfer; and did not look for other available positions not requiring weekend work. Heinrich Dep. at 48:17-52:15; 55:19-56:16.

[4]The fact that Beadle was given a choice between working on his Sabbath or not working his Sabbath and being fired proves his firing was not disciplinary. Beadle's supervisor was accommodating him when he was fired. If upper management had been willing to do the same for the short time until his probation was completed, several accommodation

3. The Sheriff holds tenaciously to the belief it need do nothing beyond pointing to its work rules. Such rigid and unhelpful conduct by a government official is contrary to the Ninth Circuit's *Hardison* interpretation. In *EEOC v. Hacienda Hotel*, 881 F.2d 1504 (9th Cir. 1989), the employer relied on "the proposition that, like TWA, it was bound by its union contract to schedule employees on the basis of seniority and cannot, therefore, be held liable." *Id.* at 1513. The Ninth Circuit disagreed:

> Appellant's reliance on *TWA* is misplaced. The Court in *TWA* addressed the degree of accommodation that was required of an employer within the framework of a seniority system. The court recognized that at a minimum, the employer was required to negotiate with the employee in an effort reasonably to accommodate the employee's religious beliefs. *Id.* at 75, 97 S.Ct. at 2272; *See also Anderson v. General Dynamics Convair Aerospace Div.*, 589 F.2d at 401.
>
> The employer in *TWA*, for example, made several attempts to accommodate the religious practices of the plaintiff, including: (1) holding several meetings to try and solve the problem; (2) an authorized union search for someone who would exchange shifts, which was normal procedure; and (3) an effort to find another job in the company for the employee. *TWA*, 432 U.S. at 77, 97 S.Ct. at 2273.
>
> In the instant case, the district court found that Hacienda did nothing to solve the problem. Appellant essentially used the seniority provision of

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alternatives would have been available to Beadle.

> the collective-bargaining agreement as a shield against its statutory obligation to reasonably accommodate its employees' religious needs. "[n]either a collective-bargaining agreement nor a seniority system may be employed to violate [Title VII]. . . ." *TWA*, 432 U.S. at 79, 97 S.Ct. at 2274.

Similarly, the Sheriff attempted to use his work rules as a shield against his Title VII obligation. Surely, neutral work rules not embraced in a collective bargaining agreement do not provide the Sheriff with a *per se* defense. The Sixth Circuit in *McGuire v. General Motors, Corp.*, 956 F.2d 607 (6th Cir. 1992), clearly rejected the idea that an employer's mere allowance of shift swap, regardless of coworkers' willingness to trade, constituted a reasonable accommodation *per se*.

Contrary to the Sheriff's assertion, *Cooper v. Oak Rubber Co.*, 15 F.3d 1375, 1379 (6th Cir. 1994), concluded "[a]n employer does not fulfill its obligation to reasonably accommodate a religious belief" when it offers the employee the option of shift trading that fails to ensure the employee will not have to work her Sabbath. *Cooper* also stated that requiring the employee to use all her accrued vacation to avoid Sabbath work "does not 'reasonably accommodate' the employee's religious beliefs." *Id.*

In *Ansonia Bd. of Educ. v. Philbrook*, 479 U.S. 60 (1986), another case relied on by the Sheriff, the Court was asked whether a school board's collective bargaining agreement, which provided only three days of annual leave for observance of mandatory religious holidays and limited the use of personal business leave, satisfied Title VII's accommodation requirement. Philbrook had been forced to take additional leave without pay to avoid the conflict with his religious observances. The Court said "the school board policy in this

case, requiring respondent to take unpaid leave for holy day observance that exceeded the amount allowed by the collective-bargaining agreement, would *generally* be a reasonable one." *Id.* at 70 (emphasis supplied). This was because "[t]he provision of unpaid leave eliminates the conflict between employment requirements and religious practices by allowing the individual to observe fully religious holy days and requires him only to give up compensation for a day that he did not in fact work." *Id.*

However, *Ansonia* clearly rejected any *per se* conclusion such as advanced by the Sheriff. In interpreting the meaning of Title VII's "reasonable accommodation," this Court looked to whether the arrangement eliminated the conflict between employment requirements and religious practices.

4. Although not important to the Eleventh Circuit's decision because of its use of the wrong legal standard, the Sheriff tries to excuse his refusal to accommodate by arguing that on one occasion Beadle abandoned his post. Opp. at 6. However, the Sheriff fails to reveal that Beadle, the day before, had informed Sergeant Fitch he be unable to work when scheduled because his religious beliefs would not allow him to work past sundown that Friday. Neither Fitch nor anyone else in the Sheriff's office attempted to accommodate Beadle. PX 27, 30, 33 at 5-27; R5-86:8-98:10.

Additionally, Captain Cook testified he realized Beadle did not simply walk off his job but instead had requested to use comp time. Cook Dep. at 64:7-65:7. And Cook acknowledged there was confusion in transmitting and understanding orders. Normally, although a request for comp time leave is returned promptly if denied, when such a request is granted it is held for processing in order to ensure the comp time will be properly deducted. Because of this practice, Beadle believed

when the request was not promptly returned prior to 6:00 p.m. on Friday, the request had been granted (R6-135:8-138:2).[5]

Those times when Beadle refused to work on his Sabbath provide perfect examples of the Sheriff's week-to-week "wait and see" attitude which amounted to no accommodation at all and was the root cause of any problems the Sheriff experienced. *See EEOC v. Arlington Transit Mix, Inc.*, 957 F.2d 219, 222 (6th Cir. 1991).[6] Beadle initially told Captain Cook his conscience would not permit him to work on his Sabbath. Cook nevertheless ordered Beadle to work as scheduled, believing that Beadle would capitulate. R6-96:17-97:11. But under Title VII Beadle could not be required to

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[5]Although Beadle refused to work on his Sabbath, any hardship experienced by the Sheriff resulted from not accommodating Beadle. When Beadle was accommodated by lower level supervisors, the accommodation never resulted in complaints by coworkers or additional cost to the Sheriff.

[6]Beadle's squad sergeant (Deitch) told Beadle, "if you can get one of the other deputies to exchange days off with you, it's all right with me." Deitch Dep. at 18:2-4. But Deitch did not consider such an arrangement to be an accommodation provided for religious purposes. *Id.* at 24:18-25:16. According to Deitch, swaps had "been a policy for the last eighteen and a half years" he had been with the Department. If a deputy was unable to get off work by using comp time, holiday, or vacation time, he could take off if he could find someone with whom to swap. *Id.* at 15:20-19:6. However, Deitch considered any personal assistance in the swapping process to be "babysitting." *Id.* at 36:8-37:13; 38:7-39:3. Colonel Parrish showed similar disdain for assisting in the swap process. When asked what hardship would result from requiring supervision to at least check whether there were other officers willing to substitute, Parrish responded "it's not management's place to coordinate that." He added "[t]hat was the responsibility of Deputy Beadle and that's the advice we had from legal counsel." R7-15:21-16:7.

"compromise" his religious beliefs. *Redmond v. GAF Corp.*, 574 F.2d 897, 902 (7th Cir. 1978); *Brener v. Diagnostic Center Hosp.*, 671 F.2d 141, 146 (5th Cir. 1982).

5. The Sheriff's response ignores the Petition's second issue: if an employer has altered its neutral scheduling system to accommodate an employee's secular needs, such as schooling, may the employer withhold the same method of accommodation for an employee's religious needs? The Sheriff likewise failed to respond to Beadle's assertion that under *Ansonia*, 479 U.S. at 71, the Sheriff must provide relief from a neutral work rule (such as a rotating shift) for religious needs if it provides relief for secular reasons. The Sheriff does not deny Beadle's assertion that employees who were attending school were given special consideration and were not rotated from shift-to shift. This destroys the Department's refuge in the neutral rotating shift defense, for it cannot then claim its work rule is neutral as to religious observers.

6. The Sheriff's remaining argument is founded upon the trial court's flawed analysis, which found:

> Because of the public health, safety and welfare implications of law enforcement work, conferring upon Beadle the privilege of a permanent day off each week in this circumstance is more than a **de minimis** requirement.

App. at 23a; *see also* Opp. at 20-23.[7] The trial court

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[7]Beadle's Petition against the Tampa Police Department demonstrates that the courts below have committed manifest error in creating, by judicial fiat, an exemption for municipal law enforcement agencies from Title VII's religious accommodation requirement. (*See* pages 22-27 of Beadle's Petition for Writ of Certiorari against the Tampa, Florida, Police

marginalized the "undue hardship" standard of section 701(j) of Title VII to permit a police agency to argue, without demonstrating, that all available accommodations would result in more than a "de minimis requirement." The Sheriff cites three cases in support of that position. None of those cases, however, avoided the use of the undue hardship standard.

Factually, this case differs greatly from *United States v. City of Albuquerque*, 545 F.2d 110 (10th Cir. 1976); *Blair v. Graham Correctional Center*, 782 F. Supp. 411 (C.D. Ill. 1992); and *Ryan v. United States Dep't of Justice*, 950 F.2d 458 (7th Cir. 1991), upon which the Sheriff relies. In *City of Albuquerque*, the employee, unlike Beadle, refused to cooperate with the employer's effort to accommodate him. Nor were there alternative methods of accommodation that would have resulted in a no-cost accommodation as were present here. 545 F.2d at 113-14. In *Ryan* the employer offered to arrange for a job swap which the employee refused. 950 F.2d at 461. Here Beadle was never offered such an accommodation. And in *Blair*, unlike here, seniority provisions of a collective bargaining agreement significantly limited the available accommodation alternatives, 782 F. Supp. at 411.

CONCLUSION

For the foregoing reasons and for the reasons stated in the Petition for a Writ of Certiorari, this Court should grant the Petition.

Department.) In that case the same trial court held for the police department using an identical analysis. A Petition for Writ of Certiorari in that case was docketed in this Court on April 17, 1995, as *Aston A. Beadle v. City of Tampa, Florida, et al.*, No. 94-1705. Because both this case and the *Tampa* case employ similar analyses, they should be consolidated for oral argument.

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Respectfully submitted,

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